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Nos. 7284, 7285 and 7286

IN THE

United States Court of Appeals

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA, AS OWNER OF THE U. S. S. RUCHAMKIN, *Appellant*

v.

THE TEXAS COMPANY, OWNER OF THE TANKER WASHINGTON, *Appellee*

THE TEXAS COMPANY, OWNER OF THE TANKER WASHINGTON, Appellee

v.

THE UNITED STATES OF AMERICA, OWNER OF THE U. S. S. RUCHAMKIN, *Appellant*

EVELYN ECKERT, AS ADMINISTRATRIX OF THE ESTATE OF EDWARD JAMES ECKERT, JR., DECEASED et al, *Appellants*

v.

THE TEXAS COMPANY, *Appellee*

APPENDIX ON BEHALF OF APPELLEE, THE TEXAS COMPANY AS OWNER OF THE TANKER WASHINGTON

BAIRD, WHITE & LANNING
Proctors for Appellee
National Bank of Commerce Bldg.
Norfolk, Virginia

Counsel:
JOSEPH M. BRUSH
FRANCIS N. CRENSHAW

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

THE TEXAS COMPANY, owner of the tanker WASHINGTON, *Libelant*

v.

Admiralty Nos. 953 & 954

THE UNITED STATES OF AMERICA, owner of the USS RUCHAMKIN, *Respondent*

INTERLOCUTORY DECREE

The above entitled cause, together with libelant's Petition for Limitation of or Exoneration from Liability (Civil Action No. 1203), libel by the United States of America as owner of the USS RUCHAMKIN against The Texas Company (Civil Action No. 780) and certain death cases instituted against The Texas Company (Civil Actions Nos. 1217, 1218, 1219, 1220, 1221, 1222, 1230), having come on to be heard by the Court on the pleadings and proofs of the respective parties and claimants, and having been argued and submitted for decision, and due deliberation having been had thereon, and the court having decided that the collision was caused solely by the fault of the United States of America and its agents and employees in charge of the USS RUCHAMKIN, the USS HOLLIS and the USS FREMONT, and that the said collision was not caused or contributed to by the negligence of The Texas Company, its officers and employees or those in charge of the SS WASHINGTON, and the court having, on April 17, 1956, filed

herein a memorandum setting forth its findings of fact and conclusions of law, it is now, on motion of Francis N. Crenshaw, one of the proctors for The Texas Company.

ORDERED, ADJUDGED and DECREED that the libelants recover of and from the respondent, the United States of America, the damages which it sustained by reason of the collision between the USS RUCHAMKIN and the SS WASHINGTON on November 14, 1952 together with interest thereon and costs; and it is further

ORDERED that this cause be continued for further proceedings.

ALBERT V. BRYAN
United States District Judge

Dated at Alexandria, Va. this 11th day of May, 1956

We ask for this:

FRANCIS N. CRENSHAW
Proctor for The Texas Company

No objection as to form:

L. S. PARSONS, by T. F. MCGOVERN
United States Attorney

(Tr., p. 28)

RALPH STONE SMITH, a witness called by the Government, * * *.

(Tr., pp. 34 & 35)

CROSS-EXAMINATION

By MR. CRENSHAW:

Q. Mr. Smith, can you tell me how far at sea off the Virginia Capes Camp Pendleton might be?

A. Will you please rephrase that question?

Q. Could you tell me how far at sea off the Virginia Capes Camp Pendleton might be?

A. Camp Pendleton is on the shore; it's about three miles south of Virginia Beach.

Q. On the beach?

A. Yes, sir.

Q. Now what was the name of your office with ComPhibLant?

A. I was the Public Information Officer on the staff of ComPhibLant.

Q. I noticed that you were interested in getting this information up around the Fort Devan area. Is that so that the people at home will know what their boys are doing?

A. Correct, sir.

Q. And your office tries to keep up good public relations between the military and the home folks in letting them know that their boys are being trained; is that correct?

A. Correct, sir.

* * * * *

(Tr., p. 45)

ARTHUR JAMES GREEN, a witness called by the Government, * * *.

CROSS-EXAMINATION

(Tr., p. 54)

Q. Now would you read the title under the words Part One?

A. U. S. Naval Control of Shipping in Time of Emergency or War.

Q. That title included the paragraph 111 from which you read, did it not?

A. Yes, sir.

* * * * *

(Tr., p. 69)

BRUCE WAYNE PRITCHARD, C.I.C. USS FREMONT, a witness called by the Government * * *.

DIRECT EXAMINATION

BY MR. MCGOVERN:

(Tr., p. 72)

Q. Do you remember the events leading up to the collision between the contact Fox, also called Raid Fox, also called Skunk Fox, and the RUCHAMKIN?

A. Well, we held Skunk Fox, or Raid Fox several times during the night, but we didn't know the whereabouts of the RUCHAMKIN, and this Raid Fox, they had been steaming more or less in the same general direction that we were, and they were giving us no trouble whatsoever, and then they started to close on us. I guess around twelve or thirteen miles, and then we started plotting the RUCHAMKIN, the Raid Fox, and when she got in about, oh, five or six miles,

we lost her. We no longer held it and then shortly afterward the collision occurred.

* * * * *

CROSS-EXAMINATION

(Tr., pp. 75 & 76)

Q. Now on the VK-2, it looks like it's a rectangular surface which I'm only assuming now that that is the top of the radar; is that correct?

A. That's correct.

Q. Within that square surface is there a circular—

A. There is a circular.

Q. —area?

A. That is the P.P.I. scope, the circular area.

Q. About how big is the P.P.I. scope on the VK-2?

A. Oh, I would say—I don't remember just right off-hand.

Q. Is it about this big, indicating about twenty-four inches?

A. No. No, it must be more like this.

Q. About twelve inches?

A. Approximately twelve inches.

Q. Now there is a way by which you can plot right on top of that surface with a grease pencil?

A. Yes, there is.

Q. Is that what you were doing on this particular evening?

A. Yes.

Q. Now a grease pencil, as I understand it, you can mark an X on a smooth surface like this cellophane, and then it will show up very clearly; is that correct?

A. Yes, we had a system that we had a dial light,

you could turn it up or down, and when you turned the light up you could not see the contacts that were on the scope, but you could see your grease pencil marks and—

Q. I see.

A. And you would take your grease pencil, and leaving your dial lights down, make a spot over the contact and then turn your light up and continue his relative motion on it.

Q. So that by means of observing this VK-2 repeater and by application of successive grease pencil dots, you would have a picture of the relative movement of any given target with respect to your formation?

* * * * *

(Tr., p. 85)

EUGENE I. RICKER, C.I.C. USS RUCHAMKIN, a witness called by the Government * * *:

DIRECT EXAMINATION

(Tr., pp. 87, 88, 89, 90 & 91)

Q. Tell us what the C.I. net was and what guarding it means.

A. That is a Combat Information net. Its intercommunication between all the ships in the convoy.

Q. What does guarding it mean?

A. Standing and listening watch on that.

Q. While you were on watch, did you receive any report on the C.I. net pertaining to what is called Raid Fox? Some people call it Skunk Fox, some people call it Contact Fox. By this I mean the same vessel in all cases, the tanker which eventually collided with the RUCHAMKIN?

A. No, I did not receive nothing on it.

Q. Did you transmit any reports pertaining to Raid Fox on the C.I. net?

A. Yes, I did.

Q. What was the first occasion and explain how it came about.

A. The initial report I sent out was initial range and bearing to the contact and I asked another ship to report it. However, they did not hold it.

Q. What other ship did you ask, if you remember?

A. It was SAN MARCOS.

Q. M-A-R-C-O-S?

A. Yes.

Q. Was the SAN MARCOS another ship in your formation?

A. That's right.

Q. What does it mean to a lay person that you asked her to hold the contact and she said she wasn't able to hold it?

A. That means that she did not have it on her radar.

Q. Did you send out a report over the C.I. net of the contact Fox as it was plotted by your radar room on the FREMONT?

A. Yes. It's customary that if the ship you asked to report the contact does not hold it, then the Flag vessel commences to report it, so I sent out a course and speed and C.P.A. of the contact.

Q. Where did you get this information you sent out? Did you plot it yourself, or was—

A. No, it came from the dead reckoning tracer.

Q. And where were you standing with relation to dead reckoning tracer when you sent it out?

A. I was stationed to the right-hand side of it.

Q. Did you send out a second amplifying report on the C.I. net?

A. Yes, I did.

Q. What was that report about?

A. That was the same as the first report, only the contacts, C.P.A. had changed, and I corrected my first report.

Q. C.P.A. means Closest Point of Approach?

A. That's right.

Q. Is that a prediction which is sent out from your plotting room?

A. That's right.

Q. It hasn't happened yet?

A. No.

Q. You predict it, if the vessels maintain their course and speeds as they are plotted by your room, they will reach a Closest Point of Approach at a particular time in the future; is that correct?

A. That is right.

Q. Now did you send out any further reports on the contact?

A. No, that was all.

Q. Now did you hear any transmissions regarding the location of the RUCHAMKIN?

A. No, I did not.

Q. Let me get back to your amplifying report. Was the first Closest Point of Approach a collision with another vessel in your group?

A. Yes, the first one was on collision with the CAPRICORNUS.

Q. Did that collision actually occur?

A. No.

Q. What was the second report?

A. Passed seventeen hundred yards ahead of the CAPRICORNUS.

Q. Now, was the reconciliation between your first report with respect to CAPRICORNUS, which was that a collision was predicted to occur with the CAPRICORNUS, and the second report which was that the contact was going to pass seventeen hundred yards ahead of the CAPRICORNUS?

A. I don't believe I understand.

Q. What had happened to change your prediction?

A. Well, I don't remember exactly whether we changed course, or whether the contact changed course, but there was a course change.

Q. The essential ingredient to having a C.P.A. collision had altered, either one vessel had changed, or the other vessel; both vessels had changed?

A. That's right.

Q. When you sent out these reports, the first one being of a collision with the CAPRICORNUS, and the second one being a correction that the contact was going to pass ahead of the CAPRICORNUS, did you broadcast it generally over the C.I. net?

A. Yes.

Q. Did you request acknowledgment from the vessels in the group?

A. No, I did not.

Q. Did you get acknowledgment from the vessels in the group?

A. No.

* * * * *

(Tr., pp. 94 & 95)

Q. Now your first report then, did it contain a solution as to the future movements of the Raid Fox?

A. It was course, speed and C.P.A.

Q. What was that C.P.A. the first time, now the initial time?

A. Collision with the CAPRICORNUS.

Q. Was there ever a broadcast, to your knowledge, to the effect that the C.P.A. was collision with formation?

A. No.

Q. Was there ever a broadcast to your knowledge, that there was a solution collision with the RUCHAMKIN?

A. No.

Q. Now when you sent out this broadcast to the, containing a solution that you predicted that there would be a collision, or that these contacts showed a possible collision with the CAPRICORNUS, did you ask the CAPRICORNUS to acknowledge receipt of that message?

A. No, I didn't.

Q. Were you instructed to do that?

A. No.

Q. Did any of the officers, either in C.I.C., or on the bridge of the FREMONT, or on the Flag bridge, request you to get such an acknowledgment from the CAPRICORNUS?

A. No.

Q. Would it not have been a very simple thing to do?

A. Well, it would have been, but there were so many contact reports that I didn't want to tie up the net.

* * * * *

(Tr., 95 & 96)

Q. Do you have any recollection of such a range in your own mind?

A. Well, as he said, this contact had been with us quite a bit during the evening, and when we changed course one way, it would close and change course another way, it would open.

Q. Did you detect any change of course in the contact during this period?

A. No.

Q. All the changes of course then were on the part of your vessel, the FREMONT?

A. Yes.

* * * * *

(Tr., p. 102)

PAUL A. WELLS, C.I.C. USS RUCHAMKIN, a witness called by the Government * * *.

DIRECT EXAMINATION

(Tr., p. 104)

Q. What happened to your radar room when it was struck?

A. We lost all power and radar and radio circuits.

* * * * *

CROSS-EXAMINATION

(Tr., pp. 106, 107 & 108)

Q. Do you recall sending a message from your vessel to the FREMONT, the flagship, concerning a beach reconnaissance?

A. I believe part of it, it was sent from C.I.C.

Q. Now would you tell me what circuit that would have been sent from on your C.I.C.? I don't mean the frequency, but just the general name or designation of it.

A. I don't recall.

Q. Would it be called the C.I. net?

A. Possibly. I wouldn't say.

Q. Were the circuits, whatever its name, be the type of circuit that would connect the C.I.C. of your vessel with the C.I.C. of the other vessels in the formation?

A. Yes, sir.

Q. Now in addition to this net which connected the C.I.C.'s, was there another voice radio circuit manned and in operation this night that connected the bridge or the command of the various vessels?

A. Yes, sir; I believe so.

Q. Now in addition to those two voice radio nets was there a third net, which would be called something like screen common, or the screen circuit which connected the screening vessels?

A. Yes, as I recall.

Q. Do you remember whether or not you heard any messages over all of these circuits on this particular night?

A. No, I don't recall.

Q. Do you remember any failures in your equipment on any of those circuits on this particular night?

A. No, not that I recall.

Q. Do you think your circuits were operating properly?

A. Yes, sir, to the best of my knowledge.

Q. You had no information to the contrary?

A. No, sir.

* * * * *

(Tr., pp. 114 & 115)

Q. Now at two ten there is another message entered or there is the beginning of a message entered to the RUCHAMKIN from this same individual who we have had designated to us as Captain Day, and there is no message, there is no text in your logbook.

Now do you recall what that message was?

A. No, sir; as I recall, we were called by this ship, and they gave our call sign and before they gave the message, they gave us a wait out. In other words, they gave us, they meant stand by for the message, but they never sent it.

Q. So that at or about two ten you were being called by some other vessel but they told you to wait?

A. Yes, sir.

Q. And then they never recommenced that message to you?

A. No, sir.

* * * * *

(Tr., p. 118)

Q. It states the operation order. Do you recall seeing this operation order in C.I.C.?

A. Yes, sir.

Q. Now it says Comm position or formation, if any. By that would you have a diagram available to you in C.I.C. to show the formation?

A. Yes, sir.

Q. Would you know then where every ship was supposed to be stationed with respect to every other vessel?

A. Yes, sir.

Q. It says the O.T.C. Do you know the O.T.C. on this particular night?

A. I believe so.

Q. Do you know the station to which you were going to proceed?

A. Yes, sir.

* * * * *

(Tr., pp. 119 & 120)

BY MR. CRENSHAW:

Q. Mr. Wells, I show you a page in this C.I.C. contact and C.I.C. log, which apparently deals with the watch, the midwatch on the morning of the 14 November, RUCHAMKIN. Were those entries, or did you make those entries?

A. I don't recall, sir.

Q. You can't then identify the accuracy of any of those particular entries?

A. I believe the writing is in my handwriting.

Q. You believe it is in your handwriting?

A. Yes, sir.

Q. Is this the type of log that you would keep ordinarily in the watch of the C.I.C.?

A. Yes, sir.

Q. Now I notice there is an entry at, I believe, time zero one three seven, maneuvering as necessary to join formation, taking screen station number three, FREMONT guide one one nine degrees true, fifty-five hundred yards.

Now would you explain to me what that entry says in English, common laymen's English.

A. Well, maneuvering as necessary to take formation, I understand taking various courses, speeds, in order to put us on station. And this number three is

the number station according to formation. The FREMONT guide and this bearing one one nine, at fifty-five hundred yards would be their bearing and range from us when we were on station.

* * * * *

(Tr., pp. 122 & 123)

Q. Now do you recall whether or not the Commanding Officer, or the Officer of the Deck requested of your C.I.C. a series of ranges and bearings to the guide, the FREMONT?

A. Yes, sir; I believe there were. We were sending them up to the bridge.

Q. You say you were sending them up to the bridge?

A. Yes, sir.

Q. Do you have any recollection of about how frequently these were being sent?

A. No, sir; I couldn't say.

Q. Tell me, would you have to stop the sweep on your radarscope in order to range on the FREMONT, or get its proper bearing?

A. To get an accurate bearing range; yes.

Q. Well, if the Officer of the Deck would ask you for a series of ranges and bearings, would you in normal practice stop your sweep to give them to him?

A. Yes.

Q. When you stop the sweep on the set in C.I.C., would that stop the sweep on the set, remote set on the bridge?

A. Yes, sir.

Q. So that if you were on the bridge and looking at the remote set, there, you would not get the continu-

ous picture presented to you from the bridge that you would get if the antenna were allowed to rotate freely?

A. Yes, sir.

Q. And that would be perfectly obvious to the Officer of the Deck, or anyone there who happened to look at the radar?

A. Yes, sir.

* * * * *

(Tr., p. 129)

Q. So that your radar was operating and presumably detecting the contacts when they were there, was it not?

A. Yes, sir.

Q. But you simply made no record of it?

A. No, sir.

* * * * *

(Tr., p. 129)

ROBERT E. GORENC, C.I.C. USS RUCHAMKIN, a witness called by the Government * * *.

CROSS-EXAMINATION

(Tr., pp. 135, 136 & 137)

Q. Now, as a maneuvering board has a certain degree of mystery to it, Mr. Gorenc, some of us that are not so familiar with it, and would it be fair to characterize it as a device by which you can measure or estimate relative motion and by that means advise the bridge or the Commanding Officer a suggested method of getting from one position to another in relation to some central ship or guide, such as in this case is the FREMONT?

A. That would be an accurate statement.

Q. By use of this device is it possible to say with a fair degree of accuracy what course and speed you

should steer? In other words, to predict how your vessel will move with relation to the other vessels?

A. Yes, it is quite accurate.

Q. Now on a maneuvering board would you have a sketch or a drawing or a presentation of all of the ships in the formation, one ship, or just your ship, or how would you set it up?

A. Well, it would be unnecessary to have all the ships on the plot that you were working on this particular problem.

Q. You would have to have some point of reference, would you not, Mr. Gorenc?

A. Yes.

Q. Now would that point of reference be the FREMONT, or would it be yourself?

A. Well, if you're maneuvering around the FREMONT, and that was the point of reference for this problem—

Q. In other words, she would probably be at the middle then, would she not?

A. Yes.

Q. Now then, would your present position be shown on this board?

A. Yes, sir.

Q. And would your future position be shown on the board?

A. Yes, sir.

Q. Now as you proceeded from your present to your future position, would you take consecutive ranges and bearings to determine whether or not you were going there?

A. Yes, sir.

Q. Now what would you do, draw a line, say, from your present position to where you wanted to go and see if you followed along that line?

A. That is the usual practice.

Q. And did you do that on this particular night?

A. I believe I did.

Q. What would you do with a solution? Suppose you did work up and, say, figure in your own mind that if you steered, say, course two six o, or two six o at twenty-two knots, you would get where you wanted to get? What would you do with that information; to whom would you tell it?

A. It would be relayed to the bridge.

Q. Where the Officer of the Deck and the captain were; is that correct?

A. Yes.

Q. And do you remember doing that on this particular night?

A. Yes, I do.

* * * * *

(Tr., pp. 139, 140 & 141)

Q. I show you a copy of your testimony before the Coast Guard at page 255, the last paragraph, question number seven. There you were asked, what messages had you sent or received in, let us say, the hour before the collision.

Would you look at the answer you gave then and see whether or not that coincides with your recollection? Does it? Is that substantially correct?

A. I believe it is substantially correct.

Q. Would you read that answer.

A. Well, sir, I think the only messages that we were concerned with at that time, the hour before the

collision, were those concerning our joining the formation and proceeding to station. I cannot establish the times, but I think shortly, approximately two o'clock. We notified the formation, that is, the screen commander that we were ready to join the station and the answer we were given was wait. I believe we notified them once more, and were told to wait again, and then the next message we got from them was to expedite, assume station.

Q. Now, Mr. Gorenc, the beginning of that answer—I think the only messages that we were concerned with at that time, the hour before the collision, were those concerning our joining the formation and proceeding to station.

Now does that mean you didn't pay attention to any other messages that came over the air?

A. No, it is a matter of which is primary.

Q. How many radio circuits do you have, did you have to guard in there, one or more?

A. More than one.

Q. How many would you say; as many as three or five?

A. As I recall there were six nets were to be guarded, five, I believe, were guarded that night at C.I.C.

Q. How many men do you have to guard those nets?

A. Well, the total number watch standers was three.

Q. You had three men. Now who told you to guard those nets; under whose directions did you guard those nets?

A. Well, the Op orders provided for the nets.

Q. The Operation order?

Now would the people who wrote and, answer this only if you know, would the people who wrote that Operation order know that you only had three men there to man the radars, to listen to the radio and to do the plotting?

A. I couldn't say.

Q. Well, could you say, would you say that? Would you say that three is an ordinary number of men in the C.I.C. of an A.P.D.?

A. The figure would be something like that, near that.

Q. So that it would be expected that there would be about that many people there to guard all these various radio nets?

A. Yes, sir.

Q. There was nothing unusual about your C.I.C., was it, the RUCHAMKIN's?

A. No, sir.

* * * * *

(Tr., pp. 146 & 147)

Q. Do you recall any messages concerning the proximity to your formation of shipping or unidentified radar contacts?

A. Question that we made?

Q. Either that you had made to the O.T.C., or that he was sending out for your benefit?

A. I don't recall any specifically.

Q. Specifically do you recall a transmission to the effect that there was a Raid Fox and that the C.P.A. of Raid Fox was estimated to be collision with the formation, or collision with the CAPRICORNUS?

A. No.

Q. Mr. Gorenc, how long had you been on watch in the C.I.C. or elsewhere prior to midnight?

A. I believe my previous testimony said seven-thirty that evening.

Q. That's correct.

A. It must be.

Q. Had you been in the C.I.C. when Captain Jackson or the Officer of the Deck of the RUCHAMKIN had undergone a maneuver such as approaching or joining a formation before?

A. Yes, I had, sir.

Q. Is it a sort of an involved thing or is it perfectly simple to do?

A. It is—actually it is comparatively simple. It's habit-forming, like any other maneuver, I suppose.

* * * * *

(Tr., p. 153)

Q. If you don't know as you were coming along that line, parallel to and a little to the right of the formation and going up ahead of her, were you plotting a maneuvering board solution and keeping track of your position with respect to the FREMONT?

A. Yes, sir.

Q. Was the relative motion of the various vessels involved proceeding properly? Did it look like the solution was working out right?

A. Yes, it did, sir.

Q. Now did you notice any other contacts in this group?

A. No, sir.

* * * * *

(Tr., pp. 158, 159 & 160)

Q. Now, Mr. Gorenc, aside from the possibility then that there was one of these vessels directly in the way of the RUCHAMKIN's radar, is there any reason why you wouldn't have picked up the WASHINGTON coming down there?

A. Well, we were frequently on a small scale.

Q. Why were you on a small scale?

A. To get more accurate ranges and bearings on the guide while we were proceeding to station.

Q. Now at whose request did you do that?

A. Well, that was done either for the plotter in C.I.C. or at the request of the bridge.

Q. Now do you consider then that the main thing you had to do with that radar would be to get the captain up there to his new station in the screen?

A. I think I did.

Q. Now that would be then to the exclusion of an effective search?

A. No, sir.

Q. Well, it would hinder your search, would it not?

A. Yes, it would hinder.

Q. You felt that the station-keeping was really primary at that time?

A. At that time, yes, I believe so.

Q. Did you feel that there would be, that you could rely on the fact that some of these big ships would tell you if there was anything in trouble up ahead of you?

A. Well, that's accepted practice in C.I.C.'s.

* * * * *

Q. Thinking back at the time not knowing a thing, about this strange vessel, would there be a reaction that you would expect with the formation slowed down?

A. Well, my actual reaction at the time, as I recall, was the fact that they, we were going to proceed some place in formation and they wanted us to expedite. That was my first reaction. My only reaction.

Q. So you thought they slowed down to this to help you get up where you belonged?

A. If I thought anything, I believe I thought that.

* * * * *

(Tr., pp. 165 & 166)

THE COURT: Let him be released.

Now he was testifying from the logs of the C.I.C. of the RUCHAMKIN, was he not?

MR. CRENSHAW: He was.

THE COURT: That he kept himself, or was kept in that Center?

MR. MCGOVERN: Kept by the previous witness.

MR. CRENSHAW: There is one we corrected during the recess, if Your Honor please. The call sign and one of the earlier witnesses, I don't recall which one we had, referred to the O.T.C. having issued, sent orders to the RUCHAMKIN and by clarification of the call signs with the naval officers involved, we clarified it and those orders were issued by the Screen Commander and it was brought out. That is why we brought it out categorically by this last man, but upon, after close reading, it will appear that there is a conflict in the evidence of this man from the C.I.C. of the

RUCHAMKIN with one of the former ones, and the reason for it is because we misinterpreted the call signs in the C.I.C. log. The ships' names don't appear, but this Navy—

MR. MCGOVERN: They have a system, one or two after the letters, and the same letters were used and the witness who actually took this was examined on the letters as they were misinterpreted rather than as is properly—

MR. CRENSHAW: Erroneous interpretation.

* * * * *

(Tr., p. 181)

CHARLES N. DAY, Officer in Tactical Command (O.T.C.), a witness called by the Government * * *.

CROSS-EXAMINATION

(Tr., pp. 201 & 202)

Q. Now you spoke briefly of a reorientation. In the picture that we have, or the sketch that we have on this blackboard, the four screening vessels are out in front of the main body. Was it on this particular night contemplated that as you changed course from north to west that those ships would go through some process and take station ahead of the vessel on the new course?

A. Yes, sir.

Q. So that basically those vessels would always stay out ahead of you, arranged or patterned or oriented on your base course?

A. That's right, sir.

Q. And that arrangement has been discussed in preliminary conferences, had it?

A. Yes, sir. We had had commanding officers' conferences at which the screen commander was in

attendance. He had his preliminary conferences. The screen commander also had his separate operation orders.

Q. Now, Captain, when you were going to make a turn with this formation, you have to think in terms of getting that screen out ahead of you, or giving them enough time to get there, do you not?

A. Yes, sir.

Q. Now this particular night, the screen commander was active in keeping his screen position ahead of you, and did you have to delay your orders or because of the slowness of the screen, or were they prompt in carrying out their orders?

A. I think everything was normal, sir.

Q. Everything was normal.

* * * * *

(Tr., pp. 206 & 207)

Q. All right, sir. Then you changed course at about ten minutes of two from two seven o to two five seven?

A. Navigational course to Camp Pendleton.

Q. That course of two five seven was designed to take you to where?

A. Camp Pendleton, sir, where the assault area landing—

Q. Is there a Point Yoke that was mentioned in your Operation order?

A. Yes, sir; I believe there was.

Q. Now was that a point off Camp, the beach at Camp Pendleton to which you were actually headed?

A. I believe it was. I can't—

Q. So you set your course at zero one fifty, you set your course of two five seven to head for that position? Was that your intention?

A. Yes, sir.

* * * * *

(Tr., pp. 214, 215, 216, 217 & 218)

Q. By the way, Captain Day, have you served with your particular staff for some length of time?

A. I had served with them during the planning period; no operational period, sir.

Q. Were you pretty well familiar with their experience and abilities?

A. I would say that I was. I had fairly well sized up all of my staff officers.

Q. Do you remember Ensign Gilliland?

A. Very well, sir.

Q. And what job did he have this particular night?

A. He was a junior watch officer. He was more or less—he had not taken over the duties as a regular watch officer. He was under training, in other words.

Q. Then he was not very much experienced then, was he?

A. Well, I wouldn't say that, sir. He was an outstanding officer. He did have considerable experience and much aptitude and I had extreme reliance in him.

Q. Now were you asked questions at the Naval Court of Inquiry regarding the experience of your staff?

A. Yes, I believe I was.

Q. Were you asked, do you remember, a question, number ninety-one; Who was your staff watch

officer from the zero zero zero to zero four hundred watch? Answer: Lieutenant Nelson.

The next question was, What is his experience? Answer: I imagine the same. As I say, I am not fully acquainted with the official or personal qualifications of the officers, most certainly from the time that I have had the division. I have not become fully acquainted with the characteristics of my staff.

Now would that statement be right or—

A. I think I could give it, sir. I'd been with them during the planning period and had pretty well become acquainted with all of my staff officers. Operationally this was practically our first operation together and I would have some difficulty in, at that time, of evaluating them to the satisfaction of being able to answer the Court of Inquiry.

Q. Now what sort of experience had you personally had, Captain Day, in running this sort of a maneuver? Had you done this before?

A. Not with the amphibious type of exercise which was embodied in Seascape. From June until September I had been in operational control of a task group, of a considerable number of ships which operated out of Norfolk and into the North Atlantic waters, Newfoundland, Labrador, Greenland and back over a period of three months. Previous to that, during the war I was the commanding officer of a flagship which had tactical command of thirty-seven ships on operation out of Guam, sir.

Q. With this background of experience in group operations then, would you say that it was a dangerous thing to have a strange vessel within one of your formations?

A. Yes, sir; it was very dangerous, sir, and it was apparent from the time that the ship started its approach into the screen, that it was a very dangerous situation. It is recognized universally as a very dangerous situation.

Q. And you recognized on this particular night as a dangerous situation.

A. Yes, sir.

Q. Would you consider that the screen was a part of your formation?

A. Yes, sir; it was a part of my formation.

Q. Now do you know very much about these screening ships, the personnel aboard them; have you been an A.P.D. or something like that or destroyer—

A. I have visited them. I have never served on board an A.P.D. or a destroyer, but I visited them and I have a pretty good understanding of that make-up, their operations and personnel.

Q. Now, you have on your ship, you say, the flag has the communications department of the flagship. You would have the signalman then under your control, would you not?

A. Yes, sir.

Q. Did they stand their watch on a level, same level that you were on, or one above that?

A. They were on the tactical bridge with me, sir.

Q. Same level with you?

A. Yes, sir.

Q. Now do you know what the signalman's duties are with respect to observing the other vessels in your formation?

A. They assisted as lookouts as well as being their basic job and carrying out their basic job of signalman.

Q. One of the signalmen has characterized himself as being a sort of high-powered lookout. Would you think that was a fair characterization of them?

A. No, sir. I think he would be a lookout assigned to carry out his normal naval lookout duties in addition to his signalman duties.

Q. And equipped with a long glass?

A. Yes, sir, or with the eight fifty binoculars.

Q. Now these lookouts, these signalmen, if you told them to signal, say, the LLOYD, would you have to say, Now signal the LLOYD. The LLOYD is over there, or would you just tell them to signal the LLOYD?

A. Signalmen normally know the location of all the ships in the formation.

Q. Signalmen pretty well pride themselves on being able to tell you where the ships are, don't they?

A. That's right, sir.

* * * * *

(Tr., pp. 234 & 235)

Q. Captain Day, you testified before the Navy Court of Inquiry very shortly after this collision, did you not?

A. Yes, sir.

Q. Now I would like to show you this Question Fifty on page 9, pertaining to the communications circuits and I would appreciate your reading that to the Court.

A. What question was it; three fifty?

Q. Number fifty; yes, sir.

A. "Did you receive any reports as to the reliability of your communications circuits on the night of 13-14 November?"

"Personally, no. There was one period I believe, zero two hundred when I wanted to reduce speed, to reduce speed from fourteen to eight knots. It took quite a bit of time to get some of these ships to answer up."

Q. Now you have testified that that message didn't actually go out then until five minutes after that; is that correct?

A. I just testified to that; yes, sir.

Q. You testified at the Navy Court of Inquiry that you had tried to send it out at two o'clock. Was that testimony correct?

A. I am not sure of that, sir. I do not recollect it, sir. I know earlier in the evening I had slowed to eight. It was about twenty-three ten. And we had had some difficulty with one of the circuits and we finally had gotten the message through.

Q. Now your estimate of the time at which you sent this business, this message out at this time was very fresh, was it not?

A. I would think so, sir.

Q. You have no reason to doubt your estimate before the Court of Inquiry, have you?

A. Well, my recollection now is not quite like that, sir.

Q. Have you given a great deal of thought and time in going over this situation, Captain Day?

A. Yes, sir.

Q. Do you think you have the whole situation in pretty clear perspective now?

A. Yes, sir; I do.

Q. Did you have it in perspective at the time you testified before the Court of Inquiry?

A. I think I did, sir.

* * * * *

(Tr., pp. 239, 240 & 241)

Q. But it was the presence of the stranger in your midst that stopped you from turning left?

A. Yes, sir. And the ships that were off my starboard bow, of course.

Q. And ships off your starboard bow kept you from turning left?

A. Oh, excuse me. I didn't get the left business. Well, to have turned left—

* * * * *

Q. Now, Captain, you and your C.I.C. and other vessels in this formation had had that tanker under observation for a long time. Had she done anything but plow right along in a northerly direction?

A. She had not been reported to me as such, sir, as a ship that was of danger to the formation before I picked her up visually, sir.

Q. After you picked her up visually, did she do anything but plow along under normally northerly course?

A. According to our radar track and my visual inspection of her track, of her course, it appeared that she was heading on a track that would head through the center of my screen and clear the CAPRICORNUS.

Q. And she didn't give you any indication that she was going to do anything else but exactly that, did she?

A. Yes, sir; that is all I had to work on.

Q. That is all you had to work on.

Now, Captain Day, when she got into this point here, she was coming down there, this particular movement line?

A. Yes, sir.

Q. Had you turned left at this particular time, these ships here would have moved in this direction, would they not?

A. Yes, sir.

Q. This ship here would already be past her and would move like this. Wherein lies the danger in a left turn there, Captain Day?

A. Well I just don't like it. It was not my judgment at the time that a turn would be safe, sir. Most certainly a change in speed would be safe under most conditions. The CAPRICORNUS, it may have taken a belated turn into the track of the WASHINGTON. Anything might have happened, sir, in the maneuver to the left.

Q. If you had have ordered all ships to turn left, you would have expected the CAPRICORNUS to turn left too?

A. Yes, sir.

Q. And you would insure that she turn left?

A. Yes, sir.

Q. And that would remove any possibility of her turning right into the tanker, would it not? These ships follow your orders, don't they?

A. That's right, sir.

Q. And you can expect them to follow it. You know they're going to do it; isn't that right, sir?

A. Normally, sir, yes, sir. There have been cases where they get the word late and trouble ensues.

Q. I suppose there are some cases where they don't get the word at all; is that right?

A. That might be the case, sir.

* * * * *

(Tr., p. 243)

Q. Now did you know, Captain, that when you had taken this group out, this fifty miles, or however many miles you were off the Virginia Capes, that you would be encountering a great deal of merchant shipping?

A. It had, the area there has a reputation for a lot of shipping, sir.

Q. It is more or less the normal shipping lanes out there, is it not?

A. Yes, sir; particularly a number of ships out of Norfolk.

* * * * *

(Tr., p. 249)

Q. Now after the collision, did you have occasion to warn away or have a merchant vessel warned away from the scene of the collision?

A. After the collision, sir?

Q. After the collision.

A. As I remember we had several contacts when we were approaching in toward Camp Pendleton, one of them in which we had a—we were the privileged vessels, and we continued and the ship turned away and another time, when we were the burdened ships and we slowed and let the ship cross ahead, sir. That was e[illegible]oute to Camp Pendleton.

Q. What I was asking, sir, is, do you recall after the collision whether or not a merchantman was warned away from the scene of the collision by your vessel, or by some other vessel in your formation?

A. As I recollect it, shortly after we had rejoined our, reformed our formation minus the FREMONT, to go back, we had a contact on the port bow, and this ship persisted in coming in, and as I remember it, we sent out a blinker signal to this ship and just as we sent the blinker signal, why the ship turned away.

* * * * *

(Tr., pp. 250 & 251)

Q. Captain Day, your formation was a little bit late leaving the Hampton Roads area, was it not?

A. Yes, sir; we had been delayed by the larger than normal landing force. We had a reinforced regiment, all combat team and the timing had been a little bit off and they were a little bit slow and we were delayed about two and a half hours.

Q. Did you not also state that you had had to slow down during the middle of the night to try to let that group to the south draw past you?

A. Yes, sir; we did.

Q. Would it be fair to say you were a little bit behind your timetable about two o'clock?

A. Yes, sir, but we still intended turning at twenty-four hundred.

Q. Now I know that you had issued a change of speed at ten minutes past two, resumption to fourteen knots from five?

A. Yes, sir.

Q. Now what was your purpose then in ordering that speed change?

A. It was to better my time back to the assault area.

Q. You were anxious to get on with the maneuver?

A. That's right, sir.

* * * * *

(Tr., pp. 255, 256 & 257)

Q. Would you say a twenty degree course change was a radical course change, Captain?

A. Not in avoiding action.

Q. In this particular situation, if the commanding officer of the USS HOLLIS, or the screen commander over here on the HOLLIS, had have reported to you that this contact had changed course radically to the right and was coming down through the formation, would that mean in your mind a twenty degree course change, or a change of greater magnitude than that?

A. It might be that, sir. My track, you see, of the WASHINGTON preceding crossing into the screen, showed the WASHINGTON crossing through the two center ships of the screen and ahead of the main body. I was reckoning with that report from C.I.C. all the time.

Q. That course change, such as the one I have described, a radical change to right, would that make it, the relative movement line bend or would it stay in the same line, if we assume that you stayed on your same course and speed?

A. It would most certainly have a direct relationship, sir.

Q. Now once again, I refer to what has been filed with the Government's Interrogatories as Exhibit 22 before the Coast Guard; does this dotted line which is extended beyond the time zero two zero two, is that intended to show relative movement line of the SS WASHINGTON as she came through your formation?

A. The track of the WASHINGTON relative to the track of the formation; yes, sir.

Q. Inspecting that relative movement line, would you say then that it indicates a radical change of course to the right of the oncoming merchantman at any one of the following times; at zero one fifty-five?

A. No, sir.

Q. At say, half way between one fifty-five and two o two?

A. No, sir.

Q. At two o two.

A. There's a slight indication there, sir.

Q. There is an indication after two o two, is it not?

A. Yes, sir.

Q. Now you gave a speed reduction after two o two?

A. Two o five I think it was, sir.

Q. Now that would have a tendency to make that line draw away from your formation a little bit?

A. That's right.

Q. That is about what it did there, didn't it?

A. Yes, sir. I did not make this relative movement diagram. My chief staff officer did, and I think he should be questioned on the mechanics of the interpolations and whatnot.

Q. I appreciate that, sir, and I don't mean to put you beyond what you can answer. If you find trouble, just tell me that, but I would like to know if this movement line indicates to you at any time that the vessel which was being plotted had changed her course to the right radically?

A. No, sir. In fact, the reports from C.I.C. did not indicate that, and I think this relative movement

diagram has as its source the C.I.C. plot, and the relative speeds of the WASHINGTON and the formation as best known.

* * * * *

(Tr., p. 272)

HENRY STANFORD PERSONS, Screen Commander (Com Screen), a witness called by the Government * * *

CROSS-EXAMINATION

(Tr., pp. 282 thru 288)

Q. Would there be anything classified about those precautionary statements?

A. No.

Q. Do you know of your own knowledge of any reason that those statements could not be and should not be produced before this Court?

A. I know of no knowledge about those statements. The Operation Order as a document is a different thing.

Q. Do you know why those statements could not be declassified by the Department of the Navy and produced to this Court?

A. I do not.

Q. Now, Admiral Persons, in this Operation you say that you made precautionary statements concerning the rules of the road. Could you give us a summary of some of those statements that you put in your Operation Order, or could you refer to this Op Order and read them to the Court?

A. I see no reason why I could not, but I believe that they were in my testimony before the Naval Court of Inquiry. They are very short, only about two or three sentences.

Q. Could we have those read into the testimony? Do you recall where it appeared?

A. If I could see my testimony before the Naval Court of Inquiry, I could tell very quickly. My memory could be at fault on that.

I am wrong. It was deleted.

Q. It was deleted?

A. Yes.

Q. But you know of your own knowledge of no reason why that should have been deleted?

A. I think that I know of my own knowledge—no, I know of no reason. Of course, I don't know the full aspect of the question.

Q. Now, Admiral Persons, did you have before you left on this Operation an opportunity to meet with your Commanding Officer and discuss the Commanding Officers of the vessels which you were to command and discuss the plan, the maneuver, and go over any part of the details of his execution?

A. I did.

Q. Now when, if you recall, were such conferences or such a conference held with respect to the Operation?

A. I don't recall the exact time, but I would say it was within a week prior to the Operation.

Q. The Commanding Officers of what vessels were present at that conference?

A. To the best of my knowledge Commanding Officers of all the screening vessels were present.

Q. Would you please name them?

A. Captain Jackson of the RUCHAMKIN.

Q. The vessel is the main—

A. RUCHAMKIN, LLOYD, HOLLIS, O'HARE, CORRY.

Q. Now at this conference did you discuss the intentions of the Officer in Tactical Command and how the screen was to behave as he made his intentions felt by tactical orders?

A. To this extent, I informed them that I had requested the O.T.C. to give me a preliminary period of some ten minutes prior to executing a large change of course so that I might commence the reorientation of the screen.

Q. Now these ships that you have mentioned were assigned to your command for this Operation, were they not?

A. For a certain period of the Operation they shifted from task unit to task unit.

Q. Now did you discuss the fact that the RUCHAMKIN would not leave as part of your screening group and would proceed on an independent mission?

A. I discussed it with Captain Jackson of the RUCHAMKIN. I do not recall specifically that I discussed it with the others at the time but Jackson and I did discuss it.

Q. What particulars of that did you discuss with Captain Jackson?

A. We mainly—rather, he informed me that his intentions were to join from astern, keeping clear of the main body, and that being the sensible and proper way to make the approach, I heartily concurred.

Q. Did you mention a course on which the main body would be steaming, or would probably be steaming at the time that Captain Jackson would make his approach?

A. No, I did not. It was too elastic.

Q. It wasn't discussed then to your recollection that he would make his approach when you were on

course two seven o, or some westerly course similar to that?

A. No, because, for example, he probably expected to join before midnight.

Q. The Operation Order contemplated his joining before midnight or about midnight, did it not?

A. To the best of my belief; yes, sir.

Q. And the group as a whole was held up somewhat upon the sortie from Norfolk?

A. Yes.

Q. And the entire Operation was a little bit behind schedule, was it not?

A. No, I don't think you could say the Operation was behind schedule. Certain phases were behind schedule, but the Operation culminated in the assault landing, if that was made on time, the Operation was not behind schedule.

Q. Then it didn't matter to you whether Captain Jackson took his assigned position in a five-ship screen anytime prior to a zero four twenty-nine, for instance, which would be one minute before that?

A. I wouldn't remember about the zero four twenty-nine. If he took his position in the cruising screen at time sufficient for other operations to take place, you must remember that I also had to detach O'HARE and CORRY, the two gunfire support ships from the screen prior to reaching the objective area, so they could proceed independently.

Q. Admiral Persons, you will have to bear with me a little bit as I did not know that. You say that is part of the Operation Order which we the uninitiated had not been trained—can you explain to me what the general purpose of maneuvering such as this is it strictly a training maneuver?

A. Yes.

Q. It equips your officers then in all phases of their activities necessary to bring such a maneuver to a successful culmination; is that correct?

A. That, but also we were training Army troops.

Q. And training Army troops.

Now in such an operation like this, I understand, you were sailing with a circular formation of five ships deployed or about a center, or six ships and on a one thousand yard circle, and then ahead of them was what has been termed a bent line screen, and you were the screen commander. Now could you tell us what the general purpose of sailing in such a screen formation is, if you know?

A. The screen of four ships were an antisubmarine screen to provide protection against submarines.

Q. That is the only sort of protection that they would provide?

A. In that formation, yes.

Q. Are you fairly familiar with the screen formations and maneuvers involving screening ships?

A. I believe I am. At the time I had just completed a refresher course of two weeks at the Fleet Sonar School at Key West.

Q. And that is the basis of your experience in screen operations, sir, that two weeks course?

A. That two weeks course plus some operations with my own ships during October in training exercises.

Q. Have you, Admiral Persons, ever been a screen commander prior to this particular night?

A. I had not been a screen commander. I had operated with screens.

Q. Now have you had command or been stationed aboard screening vessels in A.P.D.'s, L.D.I., or destroyers before?

A. Not before that time.

Q. Before this Operation?

A. But as Operations Officer of First, of the Seventh Fleet in Chinese waters, and later as Operations Officer of the Naval Task Group for the atomic tests in 1948 I had operated screens from flagship.

* * * * *

(Tr., pp. 296, 297 & 298)

Q. Now I will read a short excerpt from your testimony before the Court of Inquiry on this particular point.

> Then O.T.C. began to reorient his formation axis to get it on the—I should have said the formation axis was nine o formed up, then he began rotating his formation axis in sixty degree increments, I assumed to be ready for the landing next morning.
>
> Is that correct?

A. To the best of my knowledge, yes.

Q. At something approximately zero zero forty when the main body was in formation axis two ten true, the signal was given to reorient—pardon me—it is signal was given to change course; formation to north zero zero true. I then directed the screen to change screen axis to zero zero true. After the signal was executed, the next signal that was given was to change formation course to two seven o true. I gave signal to reorient screen axis to that same bearing, two seven o true, shortly before zero one four five. The formation then was on course two seven o. The screen

axis was two seven o true. The axis of the main body formation was two ten true and speed fourteen knots. At some time between zero one forty or thereabouts, RUCHAMKIN reported for duty. At that time she was bearing zero eight four degrees true from HOLLIS in station one, nine thousand yards.

Is that correct, sir?

A. I assume so. I know that there was at some time about then.

Q. Your recollection at the time you gave this testimony was much better than it is today?

A. I believe so.

Q. Continuing.

I told RUCHAMKIN to close formation and be prepared to take her station in the screen when so directed. I also told RUCHAMKIN to expedite closing. I informed O.T.C. that RUCHAMKIN was proceeding to close the screen and that I would tell her to take station and that I would order a five-ship screen and place RUCHAMKIN in station when she had closed. He asked me for the bearing of RUCHAMKIN from him, and I gave it, I believe, as approximately zero six five true from him. The exact range I cannot recall. But it was something like that. Sixty-five hundred yards from the guide FREMONT, my estimate.

Now that is a correct statement of the sequence as near as you can recall, is it not?

A. As near as I can recall; yes.

* * * * *

(Tr., p. 329)

Q. Now one of these messages that you relied upon as a warning to the RUCHAMKIN was your announcement to the O.T.C. that this contact had changed course radically to the right?

A. That's correct.

Q. Yet the O.T.C. testified that he never heard that message and you have said that you can't explain why he didn't hear it. Is that correct?

A. That is correct.

Q. Are you familiar with or were you then familiar with what was going on in the C.I.C. of the HOLLIS concerning radio transmissions?

A. In general.

* * * * *

(Tr., p. 341)

CHARLES T. RYAN, Signalman, USS RUCHAMKIN, a witness called by the Government * * *.

(Tr., pp. 344 & 345)

CROSS-EXAMINATION

Q. Mr. Ryan, do you recall what color lights you used in sending this message?

A. Amber lights.

Q. Is that an amber light filter over a white light?

A. That is an amber filter over a white light.

Q. That you used with a reducer which reduces it from twelve inches to six inches, something like that?

A. Yes, sir.

Q. About how far is that light ordinarily good for?

A. I don't have any idea now.

Q. But it reached the FREMONT all right?

A. Yes, sir; it did.

Q. Did you reach the HOLLIS with it?

A. No, sir.

Q. Do you know how much farther away the HOLLIS was than the FREMONT?

A. No, sir; I don't.

Q. Do you think the reason, or do you know what the reason was that you didn't reach the HOLLIS?

A. No, sir; I don't.

Q. Do you think your light was strong enough?

A. Should have been; yes, sir.

Q. As a signalman you also have lookout duties, do you not?

A. Yes, sir.

Q. Were you performing those duties, were you keeping an alert look there this particlar night?

A. At the time that I was sending out the message, I was sending the message, I wasn't acting as a lookout.

Q. From the time of the completion of the message until the collision were you looking out, were you performing your duties as a lookout, after you finished the message, from that time up until the collision; did you look out?

A. At what time, sir?

Q. Say, what time was the message, one forty-six?

A. One fifty-six.

Q. One fifty-five, from that time until two ten, or two fifteen, did you look out?

A. No, sir; from one fifty-five until two ten I was attempting to raise the HOLLIS.

Q. You were signaling to the HOLLIS all that time?

A. Right.

Q. Now you stopped signaling the HOLLIS about ten minutes after two?

A. Yes, sir.

* * * * *

(Tr., pp. 346, 347 & 348)

Q. As you were trying, signaling to the HOLLIS, were you in a starboard wing or port wing of the bridge?

A. Port wing.

Q. The same side the formation was on?

A. Yes, sir.

Q. Did you chance to look out and look at the formation as you came up?

A. Several times.

Q. Did you see them there all right?

A. Yes, sir.

Q. Did you see, did you see more just, overtaking lights—do you know what overtaking light is?

A. I don't understand you, sir.

Q. What sort of an appearance did the formation give to you?

A. Just several lights.

Q. Did you have any trouble picking out individual ships?

A. No, sir.

Q. Did you see anything beyond the formation?

A. Not that I recall, sir. No, sir.

Q. Did you look?

A. No, sir.

Q. Did you hear anything on the RUCHAMKIN on the bridge, on the bridge of the RUCHAMKIN that would have made you try to look up ahead?

A. No, sir.

Q. Past the formation?

A. No, sir.

Q. Could you hear the radio signals as they came in, the voice radio signals, the speakers?

A. Yes, I believe I could have.

Q. Did you hear anything about a stranger being in the midst?

A. Not that I recall, sir.

Q. Was the first time you had any idea that the WASHINGTON was anywhere around when you saw her, just as you said, the same time the captain saw her?

A. That's the first time.

Q. Was that the first time you had any idea what she looked like to you when you saw her?

A. Saw the bow off the RUCHAMKIN and the green running lights.

Q. How far away was she from you?

A. I don't recall now.

Q. Did you see the white lights?

A. Masthead lights.

Q. Masthead and running lights?

A. Yes, sir.

Q. And that was at the time that the captain said that looks like it's closing us, or words to that effect?

A. Words to that effect; yes, sir.

Q. You had not seen her prior to that time?

A. No, sir.

* * * * *

COLLOQUY WITH COURT

(Tr., pp. 355, 356 & 357)

MR. MCGOVERN: We have two orders before you; one is our order for production, now we have received the medical on the man, Upton, but we haven't received the other files on the two witnesses Riche and Cain, which we were entitled to under what I understood the Court's direction was and we have in turn without waiting for an order, because Mr. Crenshaw needs the material right away, we have provided him with the declassified testimony that we were ordered to give, without having a formal order. Now I submitted a formal order in both cases and I do think before we go into his witnesses who will come around sometime on Monday, that I ought to have the order entered or at least the material furnished and that certainly in order to correct my situation, my having accounted—

THE COURT: Every order that you have tendered has been entered with the exception of one you left today.

MR. MCGOVERN: Oh, I see.

THE COURT: I do not see any occasion for the one you left today, why it is necessary, because it shows on the record already.

MR. MCGOVERN: Well, that is the one which recites that we have been ordered to produce and we have produced.

THE COURT: I say it shows on the record already. I think it does. It has been so long ago I have forgotten it, but the rules that were made are of record.

MR. MCGOVERN: Your Honor, I have no difficulty in arguing the ruling and I certainly don't want

to, intend to say that want to get them in an order. It's just we have complied with the direction which was on the record. Mr. Crenshaw has certified that we had complied.

MR. CRENSHAW: Yes, I have no problem with what Mr. McGovern's position is on it today. That is, his witnesses started, and he handed us the Coast Guard testimony of those witnesses. Now on the day that our witnesses start, we will hand him the same, the records and whatever it is of our witnesses, the physical or whatever they are that we were required to produce. That is what I had in my mind that—

THE COURT: Does that include the two that he specifically mentioned?

MR. CRENSHAW: Yes, sir.

MR. MCGOVERN: Yes.

MR. CRENSHAW: It is all right here in some briefcase out [redacted] hotel, so far as that is concerned.

THE COURT: But it will be available when you introduce the witness?

MR. CRENSHAW: Yes, sir.

THE COURT: And you say—

MR. MCGOVERN: I don't think that is discovery. Discovery is supposed to know before the witness.

THE COURT: Is not that the same course that you followed?

MR. MCGOVERN: No, Your Honor; we provided testimony of witnesses beginning last, oh, in the middle of last week, and we produced the testimony just as fast as it was available without waiting for the witness to do any stand-taking.

THE COURT: Why not give it to Mr. McGovern Monday?

MR. CRENSHAW: If he wants to come out to the motel, I will give it to him tonight. I will bring it in Monday.

* * * * *

(Tr., pp. 376 thru 380)

THE COURT: Now, Mr. Crenshaw, what you are working up to, when and if it becomes pertinent, is an opportunity to see the Tactical Maneuvering Doctrine as written?

MR. CRENSHAW: Yes, sir.

THE COURT: From which this extract has been taken?

MR. CRENSHAW: Yes, sir.

THE COURT: Mr. McGovern has explained that it is beyond his control, and I thoroughly accept that statement. But it seems to me that it ought to be made of record that that is the fact. In other words, the Court fully accepts what Mr. McGovern said, but for his own protection, so that his misunderstanding might not be undermined later and found to be faulty, it would seem to me that if this is privileged, that then there should be a formal claim filed of the privilege. Otherwise the only thing we have in the record which is entirely acceptable to us, but is not acceptable to the record, is the statement of Government counsel that it is such.

MR. MCGOVERN: Yes, sir.

MR. CRENSHAW: If Your Honor please, in the Reynolds case they went so far as to state the—the Supreme Court said that the chief officers of the Department which would be the Secretary of the Navy—

THE COURT: Would claim the privilege?

MR. CRENSHAW: Would claim the privilege after a personal review of the situation.

THE COURT: I think it would have to follow the rule as to claiming the privilege just as you suggest. And it seems to me that that ought to be done in this case, if it be the fact, that the papers are withheld on the basis of privilege.

MR. MCGOVERN: I think we had better put Commander Blocher on for that.

COMMANDER BLOCHER: I am not qualified.

THE COURT: You can take Commander Blocher's statement without any oath, if you want to make a statement about it.

COMMANDER BLOCHER: Sir, it is my understanding—my understanding is based upon what I am told by Security classification officers, that these publications which we have been trying to get ahold of and trying to have declassified, are publications used by the NATO countries, that to obtain the declassification of the publications or part of them would require the consensus of a concurrence of the other NATO countries involved.

THE COURT: Well, I am sure that it is your understanding of it and I am certain that is Mr. McGovern's understanding of it, or you would not be stating it here. But that comes down to the fact that the Government is claiming a privilege.

COMMANDER BLOCHER: Yes, sir; I understand.

THE COURT: Because it cannot declassify them.

COMMANDER BLOCHER: That is right.

THE COURT: And you think they are privileged. Now that claim ought to be made in the manner and method set forth in the Reynolds case.

COMMANDER BLOCHER: Your Honor, my understanding—trying to get it clear in my own mind—my understanding of the Reynolds case was to individual testimony of people, where there had been no previous discovery or previous testimony.

THE COURT: That is certainly true.

COMMANDER BLOCHER: Here it is not the testimoney of people but simply the books themselves.

THE COURT: That is true.

COMMANDER BLOCHER: And that is what you want the Secretary of the Navy, so I understand correctly.

THE COURT: If this book cannot be declassified and you have been given to understand it cannot be then—

COMMANDER BLOCHER: That is correct.

THE COURT: Then that claim should be officially made of record.

COMMANDER BLOCHER: Right.

THE COURT: So that counsel on the other side can then make an issue of it, if he sees fit.

MR. CRENSHAW: That's right. The reason that we pushed this so vigorously, sir, was the same situation was presented to us when this case started with respect to the screen. It was argued before Your Honor in Newport News in 1954, which is a long time ago, that the position of the screen was classified and could not be told us because of the same NATO tie-up, but when we got the logbooks of all the screen vessels, the coordinates were right in the logbooks and so we wondered whether or not the same thing would happen with this.

MR. MCGOVERN: Your Honor, I think —

THE COURT: Let's do this.

MR. CRENSHAW: That is why I asked for the formal claim.

MR. MCGOVERN: It is the source. It is not the fact. It is the source that was classified.

THE COURT: Let us put this letter in evidence then with the next exhibit number, and then the Government will, as I understand, move from here to formally claim the privilege, if it be so advised.

MR. CRENSHAW: Have the name of the book from which that is taken?

THE COURT: Yes, that is Tactical Maneuvering Doctrine.

MR. MCGOVERN: Thank you.

THE CLERK: That is Government's Exhibit No. 15.

(The Clerk so marked the letter as Government's Exhibit No. 15 in evidence)

* * * * *

(Tr., p. 383)

ARTHUR C. JACKSON, Captain, USS RUCHAMKIN, a witness called by the Government * * *.

DIRECT EXAMINATION

(Tr., p. 399)

I gave the order to the Officer of the Deck, to the helm and everybody else within hearing range of my voice to take a full right rudder and—well, let me digress a little bit.

* * * * *

(Tr., pp. 417, 418 & 419)

CROSS-EXAMINATION

Q. Now this sailing, this Operation Plan, I understand occupied the span of several days, did it not?

A. Will you be specific and say either Seascape, or the Screen Op Order and so on, so that I will know specifically what you're talking about, so that I won't become confused between first one and then the other?

Q. I have in my hand a copy of Operation Order Number 1052 entitled Seascape which was handed me this morning.

A. Who put it out?

Q. This has on the front of it Commander Amphibious Training Command, United States Atlantic Fleet and Commander Task Force 86. Then inside of it sets out Task Organization.

A. We were—well, of course, the one that you hold is different from the one I remember, but this Operation involved four or five days of work, maybe more than that. I don't remember exactly now.

Q. This particular plan, in scanning it rather quickly, shows under the Task Organization of Task Force 86, a subdesignation, or a subgrouping 86.2 Attack Force, Captain C. N. Day, U.S.N. Then on page A-1, which follows page 6, under Annexed A, there is a listing of the detailed Task Organization, which sets off the top, Task Force 86 Seascape Training Force, Rear Admiral A. J. Wellings, United States Navy, and then it has several groups at A, B, C, D, E, F, and then at G, it has 86.2 Attack Force, Captain C. N. Day, U.S.N., ComTransDiv 22. Then brackets 10 to 14 November. Then under it that is listed Landing Force, and vessels are listed, FREMONT, NEW

KENT, GLYNN, CAPRICORNUS, HOLLIS, LLOYD, RUCHAMKIN, CARTER HALL, SAN MARCOS, and then four LST's and six L.C.U.s, the numbers of which are given here, but I don't believe are material.

Now does that coincide with your recollection—excuse me—it has then following on the next page, it has some LSMRs, four of them, the crews are NEWPORT NEWS, the O'HARE, the CORRY, and the NEWPORT NEWS, O'HARE and CORRY are entitled Detachments of Naval Beach Group 2. Now does that seem familiar to you, sir, as your general organization, and would you feel free to look at that?

A. As far as I know that is correct.

Q. Do you recall having seen a copy of this particular Operation Order before you sailed from the Hampton Roads area on the afternoon of the 13th?

A. Well, I have seen one very similar to that. However, it would have—the cover on the one that I saw was green instead of white. I don't know that that makes any difference or not. It apparently is the same information on the inside.

Q. Would this indicate to you then, this Annex A that I have just read to you, would indicate to you that Captain Day was the Commanding Officer of a group known as the Attack Force?

A. According to that Operation Order; yes, sir.

Q. In that Attack Force were listed the vessels whose names I have read off, or whose designations I have read such as four LST's or six L.C.U.'s, and so forth.

A. That you are reading there is an over-all organization for a period of 10 November to 14 No-

vember, but does not necessarily cover the actions of each vessel within that period. He could be ordered on detached duty to go in to Little Creek and pick up supplies, or what have you, or on detached duty, such as the RUCHAMKIN was sent on and still be a part of an over-all organization, sir.

* * * * *

(Tr., pp. 420 thru 423)

Q. Captain Jackson, prior to your sortie or sailing from Little Creek area toward Camp Pendleton, had you conferred with your superior officers, either Captain Persons or Captain Day, as to the details of carrying out the maneuver, or exercise that these various vessels were going to do?

A. I had conferred with Captain Persons personally, and I had conferred with members of Captain Day's staff. Does that answer your question, sir?

Q. Yes, and do you recall when, within a few days of your sailing, did you confer with Captain Persons?

A. I testified at the Navy Court of Inquiry that I wasn't sure but I thought that it was on the previous Friday and that is still the best of my recollection.

Q. Now what did you discuss at that time?

A. Well, first, if I remember correctly, we discussed the reconnaissance operation.

Q. Yes, sir.

A. And next in sequence would have been my returning to the formation and joining the formation, and we may have discussed administrative matters at the same time. I don't remember, but the two things we did discuss that I remember about were the reconnaissance mission and the rejoining of the formation.

Q. Now were there any particular instructions that you recall now as to how you were to carry out the reconnaissance mission or was that left pretty much up to your discretion?

A. Well, this was not so much orders as it was discussion about how and when and why. I was told what point to be where, where the people would be, how to contact the people, how I would be able to maintain contact with them from the beach to the ship, and about what time to do it, and then, of course, soon as I picked them up, to clear the beach, proceed with the next phase of the operation.

Q. Now did you discuss at this conference the manner in which you were to approach the formation which included the reconnaissance mission?

A. If I remember correctly I previously testified that during this discussion I proposed a method of doing this to the Screen Commander and he concurred, except for a couple of minor points which after his explantion of these points I agreed with him, and to the best of my recollection that is true.

Q. And what manner had you discussed approaching the formation with Captain Persons?

A. Well, if I remember correctly the plan of operation for that night was that we were to proceed out to a point at sea there, and at about twenty-two hundred we were supposed to make a turn to the north, I mean to the south, and then come back to course. They were to give the Screen until about twenty-three, twenty-five to reorient, to complete the reorientation and then shortly thereafter they were to come to course two seven o which is due west, and as soon as that reorientation was completed, they were to make a minor change of course to two seven three, and proceed to a

point which was called Yoke and this had all been figured out on the chart, time, speed and what have you; it was in the Operation Order, to the best of my memory now. I am strictly on recollection. And the plan was that I was to come up astern of the formation, keep out of the way, so to speak, until at such time she'd come back on to their stated course and after they had turned to the south, and I had made my approach on the proper side, all I had to do was just turn around and I was on station.

Being a C.I.C. man, you know what I mean. And so the other side of the coin was this. There was another formation to the south of us about the same course and speed, which would prevent us from turning to the south—

Captain, suppose—I don't mean to cut you off at all, but I am trying to, if I can, restrict your testimony right now to the conferences that you were holding.

A. All right.

Q. Now then at that conference you had intended to proceed from behind this formation up the starboard side and take your station; is that correct? At that conference?

A. That's true. In other words, I was to approach the formation from astern and take my position.

Q. And that was to be done shortly after the formation had settled on this westerly course?

A. That's true.

Q. Now did you have a conference, you say, you had a conference with Commodore Day or some of his personnel, some of his representatives?

A. True.

Q. Did you discuss with them this joining of the formation?

A. No, sir; I didn't. I don't think. What I discussed with them was the reconnaissance mission.

* * * * *

(Tr., pp. 424 & 425)

Q. Were the intentions of the group as to their courses and speeds made known to you before you sailed?

A. Say again, sir.

Q. Were the intentions of the course of the formation as to course and speeds made known to you prior to your sailing?

A. In a general way, yes, sir. There was a plan which was to be followed. Of course, this plan was contingent upon the situation as presented itself at the time.

Q. So the plan had a certain degree of fluidness about it, to meet the situation as they came up?

A. All plans have to have, sir.

* * * * *

(Tr., pp. 429 thru 434)

Q. Now you prepared on this particular evening a night order book, did you not, Captain?

A. I did.

Q. I hand you here what I believe to be the original of that night order book.

Now, Captain, referring to the entries in that night order book, does this state a time at which you expected to join the formation?

A. May I read it? I mean before.

Q. You might read it, if you would like to.

A. Well, says, We are steaming on course zero seven zero true, speed five knots, to a rendezvous with Task Group at about zero zero zero Roger. That is twelve o'clock midnight. Task Group is on the radar screen. Don't lose them. When we join them, we will go to station three—and we will skip that.

Q. Would you please read that. These records will be introduced in the court.

A. All right. Go to station three and screen three Charlie five.

Q. Three C five?

A. The course will be two seven three degrees, speed twelve knots. We expect to approach the starboard side of the formation and take station three. FREMONT is the guide at station zero. The formation is number two for the heavy ships. Then there is a rough diagram of the formation. Read the standing night orders very carefully before you assume the watch. Very respectfully, A. C. Jackson, Commanding. Then there is a place for the people to initial the night order book and also a note, note to go to general quarters at zero five forty Roger, with my initial.

Q. Now, Captain Jackson, that diagram shows a line from the, to the right of the formation and a big loop coming down into the formation. Now when you drew this night order book, did you contemplate one single turn from a course in the opposite direction from the formation and then one turn to your right which would bring you up there starboard side and into your position?

A. Well—

Q. Now this is a very rough drawing (used blackboard) of the diagram that appears in your night order book, Captain. Did you at the time you wrote

your night order book intend, expect the group to be on a course in this direction?

A. Sure.

Q. And you to come from an opposite course and swing around and come up like that and take your position?

A. That is what I had in mind; yes, sir.

Q. Was that expectation changed because of the fact that these vessels were not on time in their change to the westerly course, or do you know why that didn't happen?

A. I think you are in error in using the word time. Previously testified that there was another formation to the south which prevented them from going to the south.

Q. So that had they turned to the south and then to the west, you would have been in a position to do this?

A. Very true.

* * * * * *

(Tr., pp. 432, 433)

Q. Well, you have testified, I believe, that you were behind the formation, that you followed them around this turn?

A. True.

Q. From north to west. And that you have approached from somewhere back here, up in this direction to takae your station in the screen?

A. Very true.

Q. Now you have an entry in your night order book that you're going to take station three in a given screen. Now did you know when you wrote this night

order book where that position would be with respect to the guide?

A. I am sure I did.

Q. So that it was a definite point that you knew you were to take when you came up there and went into your station?

A. I might also say that that was in a great position, but like all plans you have brought out it would have to be fluid. It could have been changed by the Screen Commander, Commander at his discretion at any time.

Q. Was that screen designation ever changed by the Screen Commander or anyone else?

A. Not to my knowledge, but it could have been.

Q. Did you intend at any time during this evening to go to any other station in that screen except number three?

A. No, sir. Just wanted to point out that it could have been changed. It wasn't hard and fast.

* * * * *

(Tr., p. 434)

Q. Do you know, do you know of any messages sent to your vessel by the FREMONT or by the HOLLIS while you were away on this mission off Camp Pendleton, advising you of the formation axis?

A. Of my own knowledge, no, sir.

* * * * *

(Tr., pp. 437 thru 441)

A. Well, we knew that she was in station zero and in the center of the heavy formation.

Q. You were careful to keep track of where they were, weren't you?

A. Well, I had—maybe not myself personally, but I was certain that other people were doing it.

Q. Now after you had made—at the time you made your arrival report to the FREMONT, you had already reported to the HOLLIS?

A. That's right, to the best of my knowledge; yes, sir.

Q. Now, Captain, were you questioned at the Court of Inquiry about the joining and your concept of how the joining was to be made, or how it was carried out and, specifically, I call your attention to the testimony on page 54 of that body.

A. Yes, sir; I, as a matter of fact, I was not questioned specifically about that. I was more or less asked what happened and then told to go into detail.

Q. Now in the middle of that page, if you could find the sentence, that begins As to my concept of joining the screen.

A. Yes, I see it.

Q. Now would you mind reading that so we'll have it clearly into the record of how you conceived at that time of your joining?

A. As to my concept of joining the screen, I believe I had previously talked this over with my Squadron Commander. I had a slightly different idea but he wanted that one. After I looked at it, I agreed with him.

Q. Now that would mean then at that time, at that point, that you had discussed this method and he was well aware, in fact, he had suggested the method that you actually took; is that correct?

A. I just a few minutes ago testified to the same thing. You may remember it. And practically identical to this. And let's, rather than saying that he sug-

gested the method, as I testified awhile ago, I made a proposal and he made a couple of minor changes to it which I agreed to, as it says here:

Q. And then following this testimony, I will read and you follow me to be sure I have it correctly, Captain.

I was proceed up to where I could take station somewhere in the immediate vicinity of my station, and I would be directed to go right into my station. And I had previously checked with Combat and had given him the best data that I had available, and told him to keep me between one thousand and fifteen hundred yards clear of these two ships. I have here at, in my notes at zero one thirty-eight approximately, I reported to ComScreen, that I was ready to join, and it is possible that I may have misinterpreted the answer that I got. Then there is a portion deleted.

So I was told to wait, and my interpretation of this wait was that I was to wait to be moved or moved to a place so as to be ready to move in when that time came. I could have possibly been mistaken about that. The reason was this, would apparently give more time to reposition the ships. I slowed to fifteen knots and in the meantime this formation was making fourteen knots.

Stopping the reading for a moment—therefore, you received a message from your Screen Commander which you interpreted to mean to you to wait and you slowed down from some higher speed to fifteen knots and did wait; is that correct, sir?

A. That's right.

Q. Going back to the reading:

I don't believe it was executed.

Now to what does that little sentence there refer, if you know?

A. I can't be certain, but Im almost—to the best of my knowledge it was referred to this business about taking a certain station or certain screen.

Q. That's what you believed was in the material that's been stricken out or deleted from the copy that you have there?

A. That's right.

Q. Now going ahead with the reading:

Some time thereafter in order to expedite, an order to expedite came from the Screen Commander, I believe it was, to get into a position where I could take station and I went up to twenty knots, and I was about thirty-seven miles astern of station, about zero two o three, the RUCHAMKIN increased speed to twenty-two knots. On course two six five, I believe that has been previously brought out, and at zero two zero five approximately, I don't remember these times myself, that was determined later, the Task Group or movement element slowed to eight knots and to five knots at zero two o six. In the meantime, the word I got at o two o three; and I believe the way it was worded was to continue to expedite taking station. They went to eight knots, to five knots, and back to fourteen knots. Now it sometimes happens when you have one ship out of station like that and sometimes in joining up, the formation will slow down and let him get on up there, and that was the way I interpreted that slow down. As I got moving along my movement line, here, they went back to fourteen knots, and as far as I was concerned that was still perfectly normal because I was coming up abeam of them. I had about six thousand yards to go and I was making twenty-two knots and I

had informed the Screen Commander that I was making twenty-two knots, and which would have given me, well, it's an eight knot differential which would have taken me up there at a pretty good clip. It was about zero two ten or zero two twelve whenI got the last expedite. As far as I was able to determine I was coming up here and I could see a great many lights over in this area here to my port. I could see the lights from the ships in the main body, which included cargo lights, porthole lights and mast lights, or what you have from this information, and at about I guess zero two one three I sighted a ship which I believed to be this ship.

Now what ship did you mean by that last, this ship?

A. In your Operation Order, as I previously testified to you, I did not know that the Task Group Commander had rotated the axis. I also did not know that the CARTER HALL was missing. And if they had been oriented to the course they were steaming on, which would have been normal, the GLYNN would have been, on the, so to speak, starboard bow of the formation, and CAPRICORNUS would have been on the starboard quarter, and the ship that is referred to there as what I expected to be the GLYNN. Does that answer your question?

Q. Thank you, sir, very clearly.

* * * * *

(Tr., pp. 443 thru 448)

Now I believe you have testified that you sighted or asked for, I am not sure which, a solution from your C.I.C. to tell you how to proceed from where you were to your new station. Is that correct?

A. That's true.

Q. Now did you get a solution from that compartment or that organization?

A. I am certain that I did, and I have previously testified that I was steaming on two six zero, and that—I don't think I have testified in this court—but I have previously testified that I came to two six five and that the solution was two six four which meant that I was steaming one degree to the right of the solution.

Q. Now, Captain Jackson, unfortunately every one who might be interested in this record would not be as familiar as you yourself were with this solution business and what a C.I.C. would do to aid the Officer of the Deck in going from one place to another. But would you say that in order for your C.I.C. to give you a solution, they would have to know where your ship was with respect to the formation, and where you intended to go with respect to the formation.

A. They'd have to know where the guide was.

Q. They'd have to know where the guide was and—.

A. And also where I had to go.

Q. And also where you had to go.

A. And where I was at the time.

Q. So the three things they would have to absolutely know, where you were, where the guide was and where you wanted to go?

A. Well, if you knew where the guide was, you would automatically, well, getting pretty technical—depends on whether you use the center, use yourself in the center maneuvering board or the guide in the center of the maneuvering board.

Q. Well, without becoming too technical, your C.I.C.; did they know that?

A. In other words, the range and bearing of the guide would have provided two of the items of information that you spoke of.

Q. Right. That would provide yourself and --

A. Your position and the position of the guide.

Q. And the position of the guide. Now where would they get the third position, the position to which you were headed?

A. Well, it would come out of your tactical publication.

Q. That would be the station three in that screen?

A. That's right.

Q. Now this course that you were steering was slightly to the right of the formation's course, was it not?

A. About eight degrees.

Q. Now you intended to pass between a thousand and fifteen hundred yards; is that correct? Do you recall whether or not you gave them any more specific yardage than a thousand to fifteen hundred?

A. Previously testified, I think, we read this—I had previously checked with Combat and had given him the best data I had available and told him to keep me between one thousand and fifteen hundred yards clear of these two ships, referring to the CAPRICORNUS and the GLYNN.

Q. Do you recall ever giving them any other more specific distances from those ships than the one thousand to—fifteen hundred yards?

A. Somewhere in my head there is a figure of twelve hundred yards, but I don't remember where.

Q. Would you refer to Question 58 of page 61 of your testimony before the Court of Inquiry.

A. What page?

Q. Page 61, Question 58.

A. You asked me what I said, not what someone else said.

Q. Would you mind reading the question and the answer.

A. It says, Which would mean that the ship number one up here would have a considerably greater distance than one thousand yards. My question is how far do you think you were away from ship number one at the time of the collision. The best thing I can tell you about that is that I had asked Combat on telephone how close will I come to that big ship in the formation which I refer to, to this ship number one here, and he understood that I referred to the ship and he told me about twelve hundred yards.

Q. So that your Combat had told you that you would come about twelve hundred yards from the closest vessel in the heavy ship formation; is that correct?

A. That's correct.

Q. Now is that a perfectly safe way of approaching a formation, twelve hundred yards too close, do you think, Captain?

A. May I enlarge on that a little bit?

I don't think it's too close; no, sir. I frequently operated, fueling and other maneuvers at sixty feet, but that is unusual.

Q. But in maneuvering through a formation, if you say, up a thousand yards, you feel that you're in a safe zone, you're not in a danger zone; is that correct?

A. Well, I'm not in danger from my own people unless they have a breakdown or steering casualty or something of the sort.

Q. I show you a photostat and show you the page, as soon as I can find it, sir. I show you page 95 of a publication of the United States Naval Institute, entitled Naval Ship Handling, which was—

MR. MCGOVERN: Official publication, Mr. Crenshaw? Will you make that plain? Written by your brother.

MR. CRENSHAW: Which was written by Commander R. S. Crenshaw, United States Navy.

BY MR. CRENSHAW:

Q. That on page 95 gives a diagram pertaining to safety or proper or optimum conditions or methods of maneuvering through a formation. It shows there a keep out area, which for a heavy ship—here is the book. That is clearer. Which for the heavy vessel one thousand yards on the side and two thousand ahead and five hundred astern. Now you were outside of that area, were you not?

A. Well, I had told my people to keep me a thousand yards clear of the heavy ships, but I consider my experience and opinion to be just as good as this.

Q. Well, you find fault with this opinion?

A. No, not necessarily, but I would consider that my opinion was as good as that.

Q. I am not criticizing your opinion one bit. I just wanted to find out if you concurred or found fault with that area.

A. Well, I haven't—I have been very briefly show a photostat of something which I haven't had any way to know of what went on before or after context or anything. I am asked to look at one diagram and asked if I agree with it. As far as the diagram goes, we also have another saying in the Navy that you

should go ahead of a mule and astern of a ship too, but that is not necessarily apropos here. Now if I were going to pass this formation and go on independently, I would consider that five thousand yards was a safe margin because I would have no idea what these people were doing. If I were to come up in a formation, in this shell, to pass mail to him, I would have to come within heaving-line distance of him. That is about sixty feet. This information, it was set out to do, is undoubtedly very accurate, but as to whether a thousand yards or sixty feet, is a matter of difference—it's a matter of what you are order to do.

MR. CRENSHAW: I would like to offer this as Defendant's next exhibit.

THE CLERK: Texas Defendant's No. 8.

* * * * *

(Tr., pp. 449 thru 455)

Q. Now, Captain Jackson, as you came up on this maneuver, there came a time when you sighted what developed to be the WASHINGTON. Now where were you standing when you sighted those two white lights?

A. I was oh, somewhere in the port side of the bridge. I don't know the exact spot.

Q. Who else was up there with you, sir?

A. Well, there were several people on the bridge. You mean in the immediate vicinity?

Q. Did you have a port lookout up there with you?

A. He was on the wing of the bridge, to the best of my knowledge.

Q. Did you have the Officer of the Deck there on the bridge with you?

A. He was on the bridge. Yes, sir.

Q. Did you have the Junior Officer of the Deck there with you?

A. He was in the bridge area, but to the best of my knowledge he was in the wheelhouse checking the Combat solutions to the maneuvering board problem.

Q. Did you have a messenger?

A. Yes, sir.

Q. Did you have a starboard wing lookout?

A. Yes, sir.

Q. Now would you say that those men or officers were conducting an alert watch that evening?

A. Yes, sir; I had—if they hadn't been, I would have been somewhat acid about it, because I kept them on their toes. It was my job.

Q. The Commanding Officer of a vessel then sees to it that his lookouts do perform their duties; is that correct?

A. He sees to it that everybody performs his duty to the best of his ability.

Q. Now do you recall whether or not the lookouts were being relieved at or about the time of the collision?

A. Personally I wasn't paying much attention to them. Afterwards I found out that the port lookout had been relieved about roughly a minute before the collision.

Q. Did you have any reports from that port lookout, either the one that was relieving, or the one that had been relieved, about any vessel that would cause you to believe that it was not a naval vessel?

A. No, sir; because as it has been previously proved I was the first one that saw that ship for what it was.

Q. You saw it before Mr. Jarboe saw it?

A. Mr. Jarboe couldn't see it at all. He was in the pilothouse.

Q. Have you read Mr. Jarboe's testimony before the Naval Court of Inquiry, Captain?

A. I possibly have. Yes, but I don't remember the details.

Q. And you would say then that Mr. Jarboe could not have seen the WASHINGTON?

A. Well, to the best of my knowledge he was in the wheelhouse until right before the collision.

Q. If he had been in the wheelhouse, he'd have been behind you, would he not, Captain?

A. No, sir.

Q. Would he be below you, in front of you?

A. If he were in the wheelhouse, well, it's only two steps out there from the wheelhouse to the outside.

Q. And you're sure that Mr. Jarboe was not out to the wing of that bridge prior to the collision?

A. I don't know exactly where Mr. Jarboe was. If you want to know about it, the truth about it, Mr. Jarboe was working maneuvering board solutions. Was taking bearings. He was getting radar ranges. He was moving around. I was paying attention to my own job, not necessarily where he was.

Q. Then your statement as to the fact that you were the first person on the RUCHMANKIN to sight the WASHINGTON may or may not be correct; is that correct? Depending upon what Mr. Jarboe might have done unbeknownst to you?

A. Well, all the evidence that has been previously brought out, and everything that I personally know about it, I will thank you if you will refer to the record that I asked the Officer of the Deck, is that ship

closing on us, and he said that it was, and he changed course from two six five to two seven o and shortly thereafter to two seven five and then went to right full rudder when we discovered the true nature of the ship. I think that if Mr. Jarboe had been aware of the stranger in our—that was an approaching, approaching me prior to the time that I knew it, that he would have told me, since he was right there within a few feet of me. I don't know specifically what page and number you are referring to, but—

Q. Page 137, Question 43.

A. I don't hold—wait just a minute.

Q. The question is put to Mr. Jarboe, What do you estimate the distance the ship was at the time you saw the masthead and range lights? Answer: I would estimate in the neighborhood of a thousand yards because that's what range I expected approximately to pass the formation. It appeared to be at the time one of the ships in formation.

A. Yes, but you said what time did he identify as the WASHINGTON.

Q. I said see the lights. I am not trying—

A. Oh, but you're switching back and forth from one ship to another here.

Q. I am trying to find out when some human on your vessel sighted the lights that developed to be the SS WASHINGTON.

A. Well, I had previously told you that I had seen the lights.

Q. Captain, I don't mean to interrupt you, but there has been a lot of testimony in this case. You have testified before the Navy, before the Coast Guard and now before this Court. Now for the purpose of this litigation, there is no evidence in this case, or any

record in this case except what goes into this court's proceedings, so it will be helpful to the Court and to me and to Mr. McGovern if you could just clarify the situation. We know that you are intimately familiar with this and that you have been through it a number of times and it is difficult to separate these various things in your mind, and I don't mean to be pressing you, but I do want to find out now from you by a simple statement when it was to your knowledge that someone on the RUCHAMKIN sighted the lights that developed to be the WASHINGTON.

A. Well, obviously, Mr. Crenshaw, I can only testify what I know of my own knowledge and I think that I have previously testified what you hold there, that my best estimate that when I first say this ship, that I thought it was about eight hundred yards. I also further testified that I thought that was within two hundred yards of where I expected the GLYNN to be. You have perused that at some length. You know that to be a fact. And Mr. Jarboe had been on the ship approximately five months, and his estimate between a thousand yards and my eight hundred yards is simply a matter of personal opinion. I would say that he probably, if that is the case, saw it about the same time I did.

Q. And that is the basis for your statement that you saw the ship before anybody else in your vessel?

A. I feel certain, reasonably certain that I was the first one to recognize the danger that it represented.

* * * * *

(Tr., pp. 457 & 458)

Q. Captain Jackson, before lunch we were talking about your observations as you came up and sighted

the WASHINGTON. Now, Captain, we have made frequent references to the Court of Inquiry testimony and I would like to make one more on page 55 in the middle of that long paragraph, which runs from a little bit above the middle of the page to the bottom, a sentence near the right edge of the page with the two words "so shortly" and then on the next line thereafter —have you been able to find it?

A. I see it.

Q. Now I would like to read that and have you follow me and let me know if that is correct as far as you could recall.

> "So shortly thereafter I asked somebody, I believe it was the Officer of the Deck who was on the bridge with me, 'Is that ship closing us,' and he said it was. So I, still thinking this ship to be on two five seven, made this maneuver to go into—"
>
> Excuse me—
>
> "So I, still thinking this ship to be on two five seven, making this maneuver to go into station, I ordered the, order to right to two seven o, which was five degrees more than the regular course, and I believe shortly thereafter I gave two seven five. I have no guarantee that this was ever heard. About the same time I took the binoculars and looked at the ship. This was the first time that I saw the bow wave and the green light and as soon as I saw that, I gave the order for full right rudder and it was ascertained later that the furtherest the helmsman got it off was twenty-eight degrees before we got hit. I also have been told that the ship very definitely started to swing to starboard."

Now does that coincide with your recollection, Captain Jackson?

A. It does.

* * * * *

(Tr., p. 467)

Q. In the testimony of Mr. Hirshman to which you have prevtiously been referred, reference was made to ranges and bearings obtained by your C.I.C. to the guide for the benefit of the Commanding Officer. Now do you recall requesting ranges and bearings from C.I.C.?

A. Well, I must have, because I was going to station. I wanted to know what they were. Also, Mr. Jarboe was plotting up there. He had to know also.

Q. Do you have any recollection of the frequency of those requests?

A. Not specifically; no, sir.

Q. Did you know what scale the C.I.C. was operating the radar on?

A. No, sir; not of my own knowledge. I understand that they were shifting from using about three scales, but I don't know that of my own knowledge.

* * * * *

(Tr., p. 469)

Q. Now, Captain, it is customary, is it not, that both officers involved know very definitely when one or the other has the con; is that correct?

A. Very true.

Q. And likewise, if an Officer of the Deck relieves another Officer of the Deck, both of those officers understand when one has it and when the other has it; is not that right?

A. True.

Q. Isn't that more or less of a tradition and fundamental principle in the Navy?

A. It is.

* * * * *

(Tr., pp. 472 & 473)

Q. Now, Captain, when you reported to the Screen Commander and he gave you an order to close the formation and get ready to take your station, or whatever the actual text of that order was, what position were you actually heading for?

A. Well, I was going to move up into the vicinity of station three in the screen.

Q. By the time you got there, would you expect the Screen Commander would have moved the other vessels away so you could go ahead and get on station three in the screen?

A. That is true.

Q. And you have testified, have you not, that the O'HARE appeared to you that she had already commenced to do that; is that right?

A. And the HOLLIS too, but the best of my knowledge, I can't be sure.

Q. Captain, is the C.I. net piped to your bridge or was it piped to the bridge of the RUCHAMKIN?

A. I don't remember, but to the best of my knowledge it was not.

Q. Do you recall hearing any messages at all then about solutions of radar contacts of the various vessels in the formation?

A. I previously testified twice that I don't know, that I never heard anything like that.

Q. Do you know why your C.I.C. would not have received such a message if it were sent?

A. I don't know, but I do know from having talked to other people later, I was not the only one that did not hear it.

* * * * *

(Tr., pp. 477 & 478)

Q. Now, Captain, did you look at the position of the two vessels while they were together?

A. Yes, I did.

Q. How far was the WASHINGTON's bow up to your vessel at that time? Was it just touching or was it well into your ship?

A. It was well into it.

Q. Certainly it was.

Now the WASHINGTON struck your vessel abaft of midships, did it not?

A. That's right.

* * * * *

(Tr., p. 480)

CHARLES W. ELLARD, starboard lookout, USS RUCHAMKIN, a witness called by the Government * * *

(Tr., pp. 482 & 483)

CROSS-EXAMINATION

BY MR. CRENSHAW:

Q. Mr. Ellard, did you see anything to the port of the center line of your ship as you came up?

A. Not that I can remember.

Q. Could you hear any discussion on your bridge concerning what they saw on the port side?

A. No, sir. I was out on the starboard wing.

Q. You know nothing about the collision except that you heard the whistles?

A. Whistles and hard right rudder.

Q. Did you hear full right or hard right?

A. I just don't remember what it was, but I know it was the right rudder.

* * * * *

(Tr., p. 487)

JOSEPH J. CWALINA, Engineer, USS RUCHAMKIN, a witness called by the Government * * *.

(Tr., pp. 488 & 489)

THE COURT: Your engines were turning over at what r.p.m., Chief?

THE WITNESS: Three hundred sixty-five revolutions per minute.

THE COURT: And to what—give you what speed?

THE WITNESS: Approximately twenty-two knots.

* * * * *

(Tr., p. 489)

THEODORE MILAN SLAHEY, Screen Commander's CIC watch office, USS HOLLIS a witness called by the Government * * *.

(Tr., p. 494)

Q. Well, now, where was the radar track of the tanker plotted?

A. It was plotted with a grease pencil on a glass top plotting board which is called a summary plot.

* * * * *

(Tr., pp. 497 thru 501)

Q. You were the staff watch officer in C.I.C. of the HOLLIS; is that correct?

A. I was an officer of the staff stationed in the C.I.C. of the HOLLIS for a specific purpose which was to handle voice communications for the Screen Commander on the screen common secondary and also to provide him with such information as I could from the C.I.C. of the HOLLIS.

Q. Now in the execution of those duties were you aware generally of what was going on in the C.I.C. of the HOLLIS?

A. Can you be a little more specific as to what?

Q. Were you aware of the plotting activities of the personnel in the HOLLIS?

A. The personnel in the HOLLIS were plotting—yes, I was aware of that. From time to time, I observed what they were plotting, especially when I would receive a request from the bridge, from the Screen Commander.

Q. How do you recall any of the questions that you did receive from the Screen Commander on the bridge?

A. According to the testimony in the Court of Inquiry, he requested information on the plot of the target which later was determined to be the SS WASHINGTON.

Q. He asked for a C.P.A. in a solution, and so forth, did he not?

A. He asked for a Closest Point of Approach course and speed.

Q. He was told, as I recall, to wait, that you, that the C.I.C. was having difficulty because of a change of course; is that correct?

A. That's correct.

Q. Now do you know whether or not subsequent to that time a solution was sent to the Commander aboard the HOLLIS?

A. I do not know.

Q. Now you have testified before on your direct examination about the approach and the relative motion of the SS WASHINGTON as she same in, as you could tell from your radar plot. Now I have here a maneuvering board which has been, on which has been drawn small lines indicating the position of the various vessels in the screen and the heavy ships. Now I wonder first if you would look at that and let me know if that is a reasonable presentation of the formation as they were steaming on course two five seven? Does that appear to you to be correct?

A. It appears to be correct; yes, sir.

Q. There has been introduced into this litigation but the deposition has not been read in court, the deposition of one Moorhead who was the C.I.C. officer aboard the FREMONT. He was the flag, the head of the flag C.I.C. for the O.T.C. Now attached to that deposition is a page which is entitled The Report of Collision and it says that at zero one-fifty solution was —excuse me, let me start at the beginning.

Skunk had been on a summary plot for some time prior to change of two five six. At zero one five o, but was passing well clear. Course was then two seven o, speed fourteen. At on-fifty solution was begun and contact was plotted every minute until it was obtained. Contact F, bearing was two two nine degrees range six point seven when solution was sent to flag bridge and over the C.I. nets.

Now would you mind putting a red mark at two two nine degrees six point seven miles.

Let me caution you that each of those lines is one thousand yards, not one mile.

I will give you another board, Mr. Slabey, so that there won't be any confusion.

A. No, this will be all right.

(The witness marked the paper.)

Q. That would be two hundred and twenty-nine degrees true range six point seven miles. Now you have put a red dot—that would be roughly thirteen thousand four hundred yards then, would it not?

A. It would be exactly. Yes.

Q. Now there is—to continue—the SAN MARCOS has been requested to report Fox but did not hold the contact. Therefore, the FREMONT sent out contact reports. Solution was originally collision with CAPRICORNUS at two o nine. With contact on course zero one five, speed twelve. Solution was checked, when checked was again sent over C.I. net and to the flag. At this time contact was bearing two three two degrees, three point nine miles range.

Would you put another mark there?

A. (Marked.)

Q. At this time Contact Fox was bearing two three two, three point nine miles, and solution was given that Contact Fox would pass through the screen and clear of the formation with C.P.A. of three hundred twelve degrees true, seventeen hundred yards from the FREMONT.

Now—

A. It doesn't agree with—

Q. Does the conclusion that they make agree with the plot that you have drawn on that maneuvering board from that second plot?

A. Not quite. What was the range from the FREMONT?

Q. The first solution was collision with CAPRICORNUS. The second solution was three twelve true from the FREMONT and seventeen hundred yards away from the FREMONT.

A. Plotting these figures it would look to be three twelve degrees true from the FREMONT at approximately a thousand yards. I don't know which of these dots is to represent the CAPRICORNUS.

Q. The CAPRICORNUS is the one through which your red line passes.

A. Then it would be a collision with the CAPRICORNUS.

Q. Based on those two plots?

A. Based upon those two plots.

Q. And does that red line coincide somewhat with the relative motion line that you recall and to which you testified?

A. I wonder if I might see that diagram which I drew at the deposition and signed my name to.

MR. MCGOVERN: That is Texas No. 1. Your Honor, Mr. Crenshaw and I are looking for Texas No. 1 which is a diagram which this witness drew for Mr. Crenshaw, and apparently it is not—

MR. CRENSHAW: I have it at the motel, if Your Honor please. I didn't know this witness was going to appear in person. We had already taken his deposition and I didn't bring the deposi-

tion in. The diagram, I know of it there, and I am at a loss to say why I can't give it to him at this minute.

* * * * *

(Tr., pp. 503 & 504).

Q. Now, Mr. Slabey, I show you a photostat of a maneuvering board which was exhibited, which was introduced into evidence during the Coast Guard by the Commander of the Task Group, and which was, purportedly was drawn from his radar ranges and bearings, or someone in his C.I.C.

Now does that line look to you to be substantially correct as far as location is concerned?

A. Yes.

Q. Now, Mr. Slabey, referring once again to the maneuvering board with the red lines and your signature on it, do you recall the tracking, the actual tracking of the WASHINGTON in that C.I.C.? Do you recall when it was commenced and when it was stopped with relation to your formation, for the screening vessels?

A. As for the stopping, to my memory, it was stopped, the tracking was stopped on the HOLLIS some time, approximately zero one-fifty, or thereabouts.

Q. It was started then about zero one-fifty; is that correct?

A. It was stopped then.

Q. Your tracking was stopped at ten minutes of two?

A. Th- s—

Q. We are speaking of the WASHINGTON, the ship that came in from up ahead.

A. I know you are. I am trying to connect the time zero one-fifty with the position of the WASHINGTON at that time. The track was—I saw no more tracking after the WASHINGTON had come through the screen.

* * * * *

(Tr., pp. 507 thru 511)

MR. CRENSHAW: I would like to introduce this as the Texas Company's next exhibit.

THE CLERK: Texas Defendant's No. 9.

THE COURT: Let it be admitted.

(The Clerk so marked the document as Texas Defendant's Exhibit No. 9 in evidence.)

BY MR. CRENSHAW:

Q. Mr. Slabey, you have testified about a message that was transmitted to the RUCHAMKIN at or about ten minutes after two. Do you recall that?

A. Twelve minutes after two.

Q. Twelve minutes. Thank you, sir.

Now that message, as I recall, was a tactical message to the effect that stand by to form a five-ship screen, to actualy formally form it; is that correct? And they would be told at a later time when actually to do that; is that correct?

A. It's not exactly correct. The message was a message which said, at my command at a later time form a certain five-ship screen.

Q. Now you sent that message out to the CORRY, to the LLOYD, to the O'HARE, and to the RUCHAMKIN at twenty minutes after two; is that correct?

A. That's correct

Q. Now you got acknowledgments or Rogers or indications of receipt of that message from the CORRY, the LLOYD, and the O'HARE; is that right?

A. I got Rogers, receipts from those ships and a verbal receipt from the HOLLIS.

Q. But you did not get any acknowledgment or Roger or indication of receipt from the RUCHAMKIN; is that correct? At that time, at the same time of the others?

A. Yes, when the RUCHAMKIN's turn came to answer they did not answer, and the next ship answered. It's an alphabetical business. The ships answer in alphabetical order their call signs and the standard procedure is that when a ship does not answer in its turn, the next ship waits five seconds and they go on and the ship who missed its turn answers at the end of the others.

Q. Excuse me.

A. The RUCHAMKIN did not answer either in her turn or at the end after the others had answered.

Q. So then what did you do about that, sir?

A. I took the microphone in my hands and I said, "RUCHAMKIN, this is Screen Commander. Do you Roger my tactical message?"

Q. What answer did you get, sir?

A. "Screen Commander, this is RUCHAMKIN. Say again your tactical message."

Q. And then what did you do?

A. I repeated the tactical message to the RUCHAMKIN in using the voice radio procedure.

Q. And then what did she do, sir?

A. She came back almost immediately with this loud squeal.

Q. So that from two-twelve or from the time that the other ships acknowledged your message at two-twelve until the collision you were trying to raise the RUCHAMKIN over that voice radio circuit?

A. Approximately one minute of time. I have in my notes at the time, I marked the time of the RUCHAMKIN's message, We are rammed, we are sinking; save us, or words to that effect as being at two-twelve. That would mean that the other three ships and the HOLLIS had Rogered for the message at, it was two-eleven.

Q. So that from your information the message concerning the collision came in about two-twelve?

A. Yes.

Q. Now that was over which circuit, sir?

A. The secondary screen common circuit.

Q. Were you using the C.I. nets yourself or was someone else using that in C.I.C.?

A. I was not using it.

Q. Do you recall your sending, or anyone else sending a solution to Captain Day? Excuse me, Captain Persons, to the effect that the WASHINGTON would pass eight hundred yards astern of the RUCHAMKIN?

A. You—

Q. Do you remember that solution going to the Screen Commander from your C.I.C.?

A. Oh, I thought you were still on the C.I. net.

Q. No.

A. No, I do not remember, but I would not necessarily have known if it had.

Q. When was the first time you ever heard of any message, any solution like that just now?

A. That a solution such as the plot of the WASHINGTON?

Q. No. Such as eight hundred yards astern of the WASHINGTON.

THE COURT: Not astern of the WASHINGTON.

MR. CRENSHAWS Excuse me. Of the RUCHAMKIN. When did you first hear of that solution in your recollection?

THE WITNESS: No, my recollection just now—

BY MR. CRENSHAW:

Q. And you went through the Naval Inquiry testimony, the hearing before the Board, Naval Court of Inquiry, did you not?

A. I appeared as a witness before the Board.

Q. Would it be fair to say that you have discussed this case with other members of the staff and other members, people aboard the HOLLIS after the collision?

A. Yes, that is a fair statement.

MR. CRENSHAW: That is all.

* * * * *

GEORGE A. JARBOE, JOOD, USS RUCHAMKIN, a witness called by the Government * * *.

(Tr., p. 515)

DIRECT EXAMINATION

(Tr., p. 517)

— Now in order to go from the point which you have marked P.P.I. scope, over to the left-hand wing of the bridge, how many steps would you have to take, about?

A. Probably about a half a dozen.

Q. What were you doing with the P.P.I. scope out here on the wing of the bridge on the watch just before the collision?

A. I had been mostly concerned with the visual picture of the ships. I was standing largely out on the wing scanning the horizon, picture the formation as well as I could visually, and I would occasionally walk over to the P.P.I. scope and look at the presentation on the scope, and try and picture in my mind which lights belonged to which ships out on the horizon

* * * * *

(Tr., pp. 522 & 523)

CROSS-EXAMINATION

BY MR. CRENSHAW:

Q. Mr. Jarboe, when was it that you were in the pilothouse, or chart room, or wherever it was, that you were actually working out your maneuvering board with respect to the collision? A matter of how many minutes?

A. Oh, I probably came out of the pilot house about two minutes, roughly, before the collision.

Q. And how long had you been in there, sir?

A. Oh, roughly, four to six minutes maybe.

Q. Prior to that you had been out on the open area looking at the formation and comparing to the radar; is that correct?

A. Yes, sir.

Q. And were you having difficulty in ascertaining individual ships?

A. Yes, sir.

Q. Now when you looked at your radar on the bridge, do you recall what scale it was on when you looked at it?

A. Mostly, well, in fact, about the only scale I remember is twenty mile scale.

Q. Twenty mile scale?

A. Yes, sir.

Q. You never shifted to a lesser scale to help you pick out these contacts?

A. No, sir.

Q. When you went into the area to work out your maneuvering board solution, where was that solution to take your vessel?

A. Well, sir, it was to take it to the position in the screen in which we were to occupy.

Q. Is that designated as station three in that 3C5 screen?

A. Yes, sir.

Q. And that is the place that you were telling the Captain how to get to by your solution?

A. Oh, I was just checking on C.I.C.'s solution actually.

Q. You were just checking that?

A. Yes, sir.

* * * * *

(Tr., pp. 525 thru 529)

Q. Now, Mr. Jarboe, were you proceeding along, or was your vessel proceeding along the track that you had laid out, or that C.I.C. had laid out there? Did they seem to be moving up along that line properly from what you could tell prior to the collision now?

A. I don't know of any particular line, but we were moving up as had been expected, but, of course, the formation had changed several times and these solutions aren't instantaneous. We have to just rely on what you call the seaman's eye.

Q. Did it look, according to your seaman's eye, that you would probably come up, say, about a thousand, twelve hundred or fifteen hundred yards from the GLYNN or CAPRICORNUS, the nearest heavy vessel?

A. Yes, sir. Not the guide, because there was a circle of ships around the guide, but we were going to clear the outermost ships by a thousand or fifteen hundred yards.

Q. The GLYNN and the CAPRICORNUS are the outermost ships, sir?

A. Oh, I am sorry.

Q. Did you hear of a speed change by the formation?

A. Yes, sir.

Q. Did you hear of two speed changes by the formation?

A. Yes, sir.

Q. Did you have any discussion or any conjecture about why they were made, or did you know why?

A. Well, we didn't know. I just supposed that the were waiting for us to hurry up and get in the position. We didn't have so very much speed. In addition to what they were making, and it would have taken us quite awhile to get in the station, if they had continued on twenty-four knots.

Q. Was that opinion shared by the other officers on your bridge?

A. Apparently.

Q. Now would it be fair to say that you all were paying, were concentrating on this approach to your station quite carefully?

A. Yes, sir. But not to the exclusion of any safe navigation of the ship, of course.

Q. Weren't you asked the question substantially similar to that, to that before the Court of Inquiry?

A. Possibly.

Q. I am reading you Questions 73, 74, 5 and 6, on page 140.

"Mr. Jarboe, thinking back for a period of about fifteen minutes prior to the collision, can you state whether or not it is true that your duties were primarily concerned with the steps necessary to join the screen?"

The answer was, "Yes, sir."

The next question —

A. I believe that was my own job and I thought the question just asked was were the people on the bridge of RUCHAMKIN, that is, that's the way I interpreted it.

Q. The next question was,

"Would you say that you may be able to say that is true of the Officer of the Deck and the Commanding Officer?"

The answer to that question, "I believe so; yes, sir.

The next question,

"Do you recall any instructions given you to take station?"

"I don't recall. Well, yes, sir. I believe after we reported in, reported that we were there and ready to take station, first, we were given a wait, and after a period of minutes, I couldn't estimate the time, we were told to expedite taking station."

Now does that coincide with your recollection of those proceedings?

A. Yes, sir; I am sure that is my correct testimony.

Q. Now as you approached do you recall seeing side lights on the main body?

A. I really don't recall.

Q. Do you recall particularly which ship was the CAPRICORNUS, or do you know which ship was the CAPRICORNUS?

A. I did for awhile know which ship was the guide and that was the only ship I was ever really able to pick out individually. Only then because our signalman was flashing a visual signal to that ship which was answering.

Q. Now had you some ten or fifteen minutes prior to the collision, used your binoculars in aid of your visual search for these vessels for the formation?

A. I believe—I'm not sure. I probably did.

Q. Do you recall whether or not you ever sighted any extra lights, or any lights that you didn't expect to see by use of your binoculars or by your own eyes?

A. No, sir.

* * * * *

GEORGE H. WHITING, Chief Staff Officer, USS FREMONT, a witness called by the Government * * *.

(Tr., p. 530)

CROSS-EXAMINATION

(Tr., p. 535)

Q. There has been reference to a group of ships to the south of your group. Would you think that this was an identification of that group?

A. Yes, sir; that is correct. That is, the ships that were moving as a body. Perhaps there were other ships around. This was the ship that was —

Q. But at least that is one ship that was there, that ComCar Div four—that is the Commander of a Carrier Division, aircraft carrier?

A. Yes, sir.

Q. That would be a number of ships, I suppose?

A. Yes, sir; I presume it would be an aircraft carrier with escorting destroyers.

* * * * *

(Tr., pp. 538 thru 542)

Q. Now over on page 6, there is an entry at the very top of that page for which I do not see a time, to the Commander Screening Unit from Commander movement element. What does RUCHAMKIN bear from me. Over. Then there is the word wait. Would that be the answer from the Screen Commander?

A. The wait would be, sir.

Q. The wait?

A. Yes, sir.

Q. And then two messages down, there is another untimed message, or there is no time for it. Commander movement element from Commander Screening Unit, RUCHAMKIN bearing zero six five from you.

You see that? It's about two messages below the one we just read at the top of the page. Is that correct, sir?

A. Yes, sir.

Q. Now then, two messages below that—no, excuse me. The next message is from Commander movement element. Two words. Roger and out. Now does that mean the Commander movement element received

the message that the RUCHAMKIN bore z o six five from him?

A. That's correct, sir.

Q. Now the next message is to the CAPRI CORNUS from the Commander movement element, the single word, station. Now what would that mean, Captain Whiting?

A. It would mean that the CAPRICORNUS is not exactly in her assigned station and is directing the CAPRICORNUS to get in her assigned station. She may be a little behind bearing, or ahead of bearing, and the officer in Tactical Command wants her to get right on position.

Q. Now that would be one of the duties assigned to either the officer in Tactical Command, or one of his staff officers, would it not, to see that these ships were on station during the course of the night?

A. Yes, sir.

Q. I couldn't hear that.

A. Yes, sir.

Q. Now did you have that responsibility, or did Mr. Nelson have that responsibility, or did Captain Day have it?

A. It is normally the Staff Watch Officer's responsibility to insure that the ships of the formation are in their proper station. If the Division Commander is on the bridge at the time, the Staff Watch Officer will, of course, call his attention to it, and ask if he should tell the ship in question to get back on station.

Q. Now do you recall any other times during this particular evening that a similar message was sent to any of the other ships in the formation?

A. To —

Q. To get on station?

A. To get on the station. I don't recall the particular; no, sir.

Q. Would that indicate to you then that the vessels were substantially on station throughout the night?

A. Why, I know from being there most of the time that they were, sir.

Q. And they were?

A. And this also indicates it; yes, sir.

Q. And to your knowledge were the screening ships on their stations during most of the night?

A. As far as I know; they were, sir.

Q. Now down at the next entry—excuse me—one that was originally zero six hundred and which has been corrected to zero seven hundred, that would be two o'clock your local time, would it not?

A. One o'clock, sir. When it is seven, it would be two o'clock.

Q. Now that is a message to the Fast Movement Unit Commander Screening Unit from Commander Movement Element. Execute speed eight.

Now would you tell me first in plain language exactly who that was sent to and exactly who it was sent from?

A. Commander Movement Element would be the officer in Tactical Command, Captain Day. The Fast Movement Unit would be the main body.

Q. The heavy ships?

A. The heavy ships. Commander Screening Unit would be Captain Persons.

Q. Now that was, that message is logged at two o'clock local time, is it not?

A. Yes, sir.

Q. Now there has been testimony that that message was not received by other vessels until four minutes after two, or five minutes after two, and I believe you were questioned about that at the Court of Inquiry as to the delay in that message.

Do you recall first the delay and second being questioned about it?

A. I remember being questioned about delays in general. I don't recall that the questions pertained to this particular delay.

Q. Do you know now why that message was held up for four minutes?

A. No, sir; I don't recall now.

Q. Did you say you had difficulty in transmission? Was that diffculty in getting your tactical messages out throughout the course of the evening, or —

A. We had some difficulty throughout the course of the evening in getting ships to acknowledge receipt of messages.

* * * * *

(Tr., pp. 544 thru 551)

Q. Now what precautions did you take with respect to that shipping, if you took any, in your navigation? Did you take that shipping into consideration when you navigated this formation?

A. When I say I navigated, sir, I did not lay out the proposed track that we were to take that night. That was laid out and approved by the Division Commander—well, actually when I was in the Midterranean.

Q. Well, now, the original plan was to go out east, then south, then west, then to some rendezvous?

A. Yes, sir.

Q. But you couldn't do that because of this group to the south, so they went out and then turned north?

A. Yes, sir.

Q. And then back to the west?

A. That's correct.

Q. Well now, were you navigating at the time that they turned from two seven o to two five seven?

A. Yes, sir.

Q. Now why did you change at the particular time that you did change from two seven o to two five seven? Do you remember that?

A. The Division Commander asked for a course to head for the positions we had to reach off Camp Pendleton. I determined that course and he gave the course change.

Q. Now that is designated, I believe, as Point Yoke, was it not?

A. I am not sure of the designation of that.

Q. But anyway, you gave him a course from presumably where he was to the point off the beach; is that right?

A. That's correct, sir.

Q. And that is all you were trying to do, was get from one place to another?

A. That was the purpose in the navigation; yes, sir.

Q. When you gave that course to the Division Commander, you looked at your chart, I suppose, to see that there were no reefs or rocks or lighthouses or shoals between you and that point, did you not?

A. Yes, sir.

Q. So that it was safe from that standpoint?

A. That's right.

Q. Did you make any inspection of your radar or

inquire of your C.I.C. as to whether it was clear from a shipping standpoint?

A. As I recall, in figuring that course that didn't enter into it, sir, because all the Division Commander wanted to know is what is the course from here to there. As I recall, the Division Commander obtained the information you were speaking of before he gave the order to change the course.

Q. What was that last part? I beg your pardon, sir.

A. The Division Commander asked of me, what is the course from here to there.

Q. Yes, sir.

A. I worked it out and gave it to him. He then gave the order to change the course, as I recall, after he determined that shipping was, would not interfere with going on that course.

Q. Now what did he do to determine that shipping would not interfere?

A. He would normally have, and I don't recall exactly what he did, sir, because I don't know that. I was standing right by him at the time. He would normally ask C.I.C. if such a change of course would run us afoul of any shipping in that direction.

Q. Now you have no recollection of his making that inquiry on this night, or have you a recollection?

A. I don't recall specifically, sir. It was something he normally did.

Q. Do you know whether any of his other subordinates, officers, would know about that?

A. I don't know, sir. The Staff Watch Officer might know. It was only a thirteen degree change of course, as I remember.

Q. Were you aware of the presence of the WASHINGTON at that time yourself, sir?

A. No, sir.

Q. Did you make any inquiry of C.I.C. as to shipping out there yourself?

A. No, sir.

Q. You haven't, I suppose, had an opportunity to read Mr. Moorehead's testimony which has been introduced as a deposition in this case, have you, Captain?

A. I have read no testimony other than my own, sir.

Q. Mr. Moorehead testified, on page 7—well, we, of course, had the contact on our scope before it was designated, when the course was two seven o, but at that time it presented no threat to the formation. We didn't designate the contact. When we changed course to two five seven, we could see on our VK-2 repeater that this particular ship was on a collision course with us. So we immediately designated it as Raid Fox. We gave it a designation and asked the SAN MARCOS to repeat it. As I said, when they didn't hold it, we sent it out all over the net that we would report it. When we did develop the solution it was on a collision course with the formation, and we so sent out that report.

Now did they give you a report of that situation?

A. I heard that report from C.I.C., sir.

Q. Now Mr. Moorehead speaks there of a collision solution with the formation. Now what does he mean by that solution, Captain Whiting, collision with formation?

A. He means that if the formation continues on its present course and speed, and the stranger continues on its present course and speed, eventually there will be a collision between the two.

Q. So that would mean then that the stranger would at some future time come inside the formation, would it not?

A. If he, usually designates a particular ship in the formation with which collisions will occur, sir.

Q. I believe that that was subsequently done, that a solution was sent out to CAPRICORNUS, but according to Mr. Moorehead's testimony there, he is talking about solution collision formation. Now if you heard that from your C.I.C., what would that mean to you, sir?

A. I would immediately ask him to give me just where the formation collision would occur.

Q. Now do you remember what you did do in this particular, on this particular night when you received the C.I.C. report?

A. As I recall, the report I received specified CAPRICORNUS.

Q. You don't recall one that just collision formation?

A. No, sir; I do not.

Q. Now, Captain Whiting, you have had considerable experience, I suppose, in sailing either as a part of such a formation, or on staffs, or attached to commands that have sailed in formations, have you not?

A. Up until that time I had been Chief Staff Officer under Commander Transport Division 22 from February of 1952 until that date. That was the extent of my experience in sailing with formation, sir.

Q. Would you say, sir, that it is a dangerous thing in itself when a stranger vessels comes inside of a naval formation?

A. Yes, sir; I would.

Q. Now, Captain, do you recall any distances given at the time of this C.I.C. report, distance as to the WASHINGTON?

A. As I recall it was six or seven miles, sir.

Q. When you were given a course to navigate, or when you were consulted as to what the formation should do with respect to your movements right, left, or slow or speed, were you thinking in terms of the formation, were you not, as the staff, as being on the staff?

A. Yes, sir.

Q. And when you say formation, I mean screening vessels as well as heavy vessels; is that correct?

A. Are you speaking from a navigational standpoint, sir, or any change of course to avoid contact?

Q. I am speaking with you, say, to the formation change course from north to west, you contemplate all of those vessels changing course as you direct, do you not?

A. Yes, sir.

Q. So that in, you have this sense, you have this great entity again changing its course from north to west; is that correct? Is it not?

A. Yes, sir.

Q. And when you sight a contact, or when a contact is reported to you and you are charged with the operation or the control of a body of ships like this, if you were to avoid them, you would have to do so early, would you not, sir?

A. If the formation were to avoid a contact?

Q. Yes.

A. I think you should normally take action early; yes, sir.

Q. Because of the size of this group, that set out something like this (illustrated on blackboard), if you don't maneuver that early, you won't have enough time for any maneuver to be effected, would not that be correct?

A. I don't quite understand, sir, the question.

Q. Captain, you have testified that it is dangerous for a vessel to come into a formation.

A. Yes, sir.

* * * * *

(Tr., pp. 552 thru 555)

Q. Approximately, when, Captain Whiting, did you have first knowledge of the position of the RUCHAMKIN?

A. The first knowledge that I had that the RUCHAMKIN was close to the formation was at the time of the collision, sir.

Q. Now do you recall any activity on the flag bridge or among the flag officers concerning a contact at a bearing of zero six five?

A. I recall that I had just stepped out on the wing of the bridge and someone, I believe it was the Staff Watch Officer, came around from the port side of the bridge to the starboard side where I was, and asked me if I saw a contact back in the direction of the starboard quarter, and I think he specified zero six five, and I looked and did not see anything at that time. I did not know then that I was looking for the RUCHAMKIN.

Q. Now was there anyone on the staff that was paying particular attention to where the RUCHAMKIN was while she was on this independent mission and proceeding to rejoin your group?

A. No one was given that particular duty, sir.

Q. Captain Day as Commander of Task Group eighty-six point two, was, was he not?

A. I think that is the designation, sir.

Q. And the RUCHAMKIN was a vessel under the command of Commander Task Force Group eighty-six point two, was it not?

A. Yes, sir.

Q. Now would you say it is normal for a Group Commander to be interested in the whereabouts of his units?

A. Yes, sir.

Q. Did Captain Day take any steps to your knowledge to ascertain the whereabouts of the RUCHAMKIN?

A. The Screen Commander sent a message to Captain Day advising him of his intention to change the screen formation to a five-ship screen in order to admit the RUCHAMKIN. That message I saw at the time it came in. Later I think it was after the collision I learned that Captain Day had asked the Screen Commander for a position of the RUCHAMKIN on receipt of the message regarding the change of the screen formation.

Q. Can you—excuse me.

THE COURT: I do not think he has finished his answer yet.

THE WITNESS: And that is where the zero six five answer came back, and I think perhaps there was a distance along with the zero six five.

BY MR. CRENSHAW:

Q. Do you have any recollection of how, of what time that inquiry was made; was that the one that we read in the radio entry, the radio logbook? That at zero one-forty?

A. I think Captain Day's message went something like this. What does RUCHAMKIN bear from me, and I think that is the same one, sir.

Q. That was on this radio log just prior to the message at zero six-forty?

A. Yes, sir.

Q. This is a copy of it. Would that indicate to you that the message was sent just prior to that time?

A. Yes, sir. Sometime between zero six-thirty and zero six-forty Zebra time.

Q. Now did Captain Day personally ask you anything about the position of the RUCHAMKIN?

A. No, sir. He did ask about what the screen would look like when it was opened up to admit the RUCHAMKIN and I drew him a little sketch at that time.

Q. And was that about the time of this message, about twenty minutes of two, would you think?

A. I think that is correct, sir. It was right after we had received the message from Captain Persons stating that he planned to open up the screen.

Q. Now, Captain Whiting, do you recall the receipt on board the FREMONT of an arrival report sent by flashing light from the RUCHAMKIN to the FREMONT?

A. Not before the collision, sir. I did see it after the collision and noticed that it had been received before the collision, but I did not know it at that time.

Q. That message, according to the copy here, had

been received at one-forty-two, had it not?

A. I don't recall the exact time, sir. I recall that it was before the collision.

* * * * *

(Tr., p. 556 thru 559)

Q. Can you tell me what time it was received by looking at that, sir?

A. One fifty-five Roger, sir.

Q. One fifty-five. That would be local time?

A. Yes, sir.

Q. We have then referred to Government's Exhibit No. 14.

Now do you recall testifying before the Court of Inquiry that the receipt of that message was at zero one forty-two?

A. No, sir; I don't.

Q. Captain Whiting, on page 47 of your testimony before the Board of Inquiry, I find the following questions one sixty-two, and three. You have testified that after the collision you saw a write-up of a movement report which had been received by flashing light from the RUCHAMKIN. Do you remember the time of receipt of that movement report?

Answer: The time of receipt as I remember that was typed on the copy, was zero one forty-two, or very close to that.

The next question was the fact that a ship was signaling by flashing light reported to you or to the flag bridge by your lookouts around zero one forty-two. Your answer: Was that fact reported to me by the lookout, sir?

The question: To you or to your knowledge to anyone else on the flag bridge? The answer: No, not to my knowledge that I remember.

Now does that coincide with your recollection of your testimony?

A. As I recall, yes, sir. I was probably thinking about the date time group.

Q. So that you took the time from a typed copy that you had seen; is that correct?

A. Yes, sir.

Q. Now, Captain Whiting, the lookouts that are on the staff bridge, or on that level, are they required to report to you, or to the staff watch officers or to the O.T.C. of what they, whatever they might sight?

A. Yes, sir.

Q. Now who looks after, who sees to it that they do their job properly?

A. The staff watch officers, sir.

Q. Now you testified there at the Court of Inquiry that no report was made to you, or to anyone else of the staff of the receipt by the FREMONT of this visual message from the RUCHAMKIN.

A. To my knowledge.

Q. Now can you explain why you don't know about that, or why no one else seems to know about that?

A. I believe at that time the Division Commander was on the bridge, and since he was the senior officer on the bridge, the Staff Watch Officer would deal directly with him rather than with me, and as I was either in flag radio or out on the wing of the bridge, or looking at the P.P.I scope, so I was sort of out of the picture there at that time.

Q. Well, now, as I recall, Captain Day's testimony was to the effect that he also had no knowledge of that flashing light message until after the collision. Do you know why the fact of receipt of that would not be reported to either you or Captain Day?

A. No, sir. As I recall it was a deferred message. The fact that it was assigned deferred precedence indicates that it has not too great an urgency.

Q. Well, can you tell me what the Group Commander or the O.T.C., Captain Day, was doing to keep himself informed of the whereabouts of the RUCHAMKIN which he obviously expected to rejoin his formation?

A. He asked the Screen Commander to give him a position of the RUCHAMKIN, sir, and the Screen Commander did, and —

Q. Then in your mind then that would be sufficient to locate the RUCHAMKIN?

A. Ordinarily it would, sir.

Q. Now if the RUCHAMKIN, if the range to the RUCHAMKIN from the FREMONT at this particular time were about sixty-five hundred yards and the RUCHAMKIN were not dead astern in this blind spot, would there be any reason in the world why she wouldn't appear on the P.P.I. scopes up on your flag plot?

A. I think it should appear. I don't recall the scales we had up there. It is possible that we had a scale such that maybe a four thousand yard scale was being used at that time where it wouldn't appear. But normally we would have used a different scale. A ten-mile scale where it would.

* * * * *

(Tr., pp. 572 thru 575)

Q. Well, now you and the Officer in Tactical Command were operating a formation, were you not?

A. I was assisting him to do that, sir..

Q. And, well, he was running it?

A. Yes, sir; that is true.

Q. Obviously.

You testified yesterday that in order to avoid the danger of a vessel entering your screen or your formation area, the water occupied by your formation, your precautionary measures would have to be taken at an early stage; is that correct?

A. They would have to be taken earlier than if we were operating a single ship; yes, sir.

Q. And considerably earlier, would they not?

A. I would say considerably earlier. Yes, sir.

Q. Now Mr. Morehead, the C.I.C. officer on the FREMONT, in his deposition testified that such action would have had to have been taken considerably earlier than two minutes after two. Now at that time the tanker was outside of the screen formation, according to the plot which has been attached to the Government's answers to the interrogatories. Out in here somewhere (pointed to blackboard), somewhere in this position. Now do you agree with Mr. Moorehead's conclusion that action by your vessel or your formation to have done any good to relieve that danger of coming into the formation area would have to have been taken considerably earlier than two o two?

A. If I was to make a change of course to prevent the tanker from coming within the complete formation, that is, considering the screen as a part of the over-all formation; it would have to have been taken earlier than that, but I think as we discussed yesterday,

there are relative degrees of danger and I wouldn't be extremely concerned about the tanker or any stranger passing just inside the outermost screen, we'll say. My primary concern would be in keeping it clear of the main body of the formation.

Q. Now when you changed course or when your formation changed course from two seven o to two five seven, Mr. Moorehead testified that that placed your formation on a collision course with the tanker. Now, was it essential that you change course to two five seven at that very moment?

A. It was not essential; no, sir.

Q. And after you changed course to two five seven, was it essential for the accomplishment of your mission that you stayed exactly fourteen knots, or could you have slowed down without jeopardizing your mission?

A. We had previously established a time to arrive at the point of Camp Pendleton. Had we been late nothing serious would have happened. We were trying, of course, to make the schedule, as we always do, but had we been an hour or two hours late, three hours, it wouldn't have made any great deal of difference.

Q. Now you have testified, I believe yesterday, that you knew first of the presence of the RUCHAMKIN at the time of the collision; is that correct?

A. That is.

Q. You yourself?

A. Her presence right near the formation, I had an indication that she was somewhere in the vicinity when I learned of Captain Persons' message to Captain Day to the effect that he intended to open up the screen to admit the RUCHAMKIN.

Q. Now had you known the RUCHAMKIN, that the RUCHAMKIN was where she actually was, Captain Whiting, and that the WASHINGTON was where she actually was, would you have warned the RUCHAMKIN of the presence of the WASHINGTON?

A. I was not aware of any legal responsibility to do so, but I feel sure that I would have done so, sir, if there was an opportune moment to do it.

Q. Now at the Court of Inquiry, Captain Whiting, were you asked the question one seven two, Now, Commander Whiting, assuming if you had known that the RUCHAMKIN was on the starboard quarter, where it was, and that she didn't know about the CARTER HALL being absent —

Incidentally this question is being put to you by the Captain of the RUCHAMKIN, Commander Jackson, and that she had no reason to know of the present axis of the movement element formation, if you had, realizing these facts, and if you had known that the RUCHAMKIN was on the starboard quarter of the formation, and knowing of the WASHINGTON coming through, would you in that case have made any special effort to notify the RUCHAMKIN about movement of a strange ship?

The answer was, Yes, sir, notifying a ship in the screen or any ship such as the RUCHAMKIN was at that time, of another ship that might cause her trouble is an added precaution I think everyone will take if they were aware of the situation and think that some ship might give her trouble. I would say that I would have notified her, yes, if I thought that the merchant ship was going to come close at all.

Now at that time, Captain Whiting, you made no mention of legal responsibility. Now is that because of the difference in the proceedings that this is a civil trial that you have inserted that?

A. That is true, sir.

* * * * *

(Tr., pp. 579 thru 582)

Q. Now, Captain Whiting, I show you United States Coast and Geodetic Survey Chart 1222 and ask you if you would mark with a red pencil the location of Camp Pendleton on that chart.

A. It is roughly in here. Just south of Virginia Beach.

Q. Now is it labeled on that chart?

A. No, sir, it is not. Camp Pendleton is a military reservation inland from the beaches. We refer to the beaches as Camp Pendleton Beaches. The name Camp Pendleton, military reservation, which is just here.

Q. Now, Captain, looking carefully at this chart are you familiar with Virginia Beach?

A. In a general way, sir.

Q. Do you see a scale of miles, or can you arrange one by use of the latitude marks?

A. It is roughly one mile to an inch, sir.

Q. Could you then look closely at this chart and do you see there the road from Oceana into Virginia Beach?

A. Yes, sir.

Q. Now that comes in on 27th Street, does it not, at Virginia Beach?

A. I am not familiar, not that familiar with the streets, sir.

Q. You are not. Are you familiar with Roody Inlet, just south of Virginia Beach?

A. I know that it exists just south of Virginia Beach, sir.

Q. Are you familiar with Creatan Beach, a development just south of Roody Inlet?

A. I know about where it would be, sir. I am not familiar with it by name.

Q. It has also been referred to as Chatauqua By The Sea. That is the name of the ancient plat recorded about eighteen hundred. Does that ring a bell?

A. No, sir.

Q. Captain, are you sure that the area you have marked between those two red lines is not Creatan Beach which lies between Roody Inlet and Camp Pendleton, but is in fact Camp Pendleton?

A. I am not sure at all of this, sir. I would have to have a better map.

Q. Then you can't tell from your own experience whether Camp Pendleton is in fact shown on that chart?

A. This is not in sufficient detail to outline Camp Pendleton. However, I see now the road that is taken to Camp Pendleton when coming along, I believe.

Q. Atlantic Avenue, Virginia Beach?

A. Yes, sir; right down here, up here and Camp Pendleton is probably off the chart, right in here—is a new steel pier. (Marked on chart.) I would say that.

Q. Could you mark that with an "A"?

A. Right here (marked). Just above in that position is a new steel pier that has been constructed within the last six months. This looks like Lake Christine right here. If that is Lake Christine, then Camp

Pendleton would start almost at the bottom of this chart right there, sir.

Q. And stands in a southerly direction?

A. That's right, sir.

Q. And you are the Chief Staff Officer of the group, Commander of the Task Forces of Operation Seascape; is that correct?

A. I was, sir.

Q. You were at that time.

MR. CRENSHAW: That is all.

I would like to offer the chart into evidence.

MR. MCGOVERN: No objection.

THE COURT: Let it be admitted.

THE CLERK: Texas Defendant's No. 10.

(The Clerk so marked the chart as Texas Defendant's Exhibit No. 10 in evidence.)

* * * * *

Statement re deposition of JAMES UPTON.

(Tr., pp. 584 & 585)

I would like to ask you, however, two questions. One, do you know of any warning that was given to foreign shipping of Operation Seascape?

A. By foreign shipping, do you mean outside of the United States Navy?

Q. Yes, sir; foreign flag vessels; for instance, Greek, Panamanian, Swede.

A. I am not sure that the Notice to Mariners was diseminated to them, sir.

Q. That would be the only one?

A. So far as I know that would be the only one, sir.

* * * * *

(Tr., pp. 587 thru 589)

Mr. Fletcher has pointed out to me that we have one of these witnesses who is bound in with another.

THE CLERK: No, it isn't. I just discovered it is three separate volumes.

MR. MCGOVERN: I will just offer the two volumes of Nelson. Nelson went on for two days.

Then, Your Honor, we have a stipulation under which, that is Upton, the lookout on the tanker, could not be produced, we would introduce his Coast Guard testimony and I understand —

MR. BRUSH: May I make a statement to the Court about Upton? Following our conference here in connection with the motions, I communicated with his attorney, Mr. Denbeigh, by registered mail, and explained that we required Mr. Upton's attendance at the trial, or in lieu thereof, that we wanted to take his testimony by deposition. Mr. Upton apparently frequents the Seamen's Institutes and flophouses in New York and his attorney would not give me his current address. I have had people out trying to serve a subpoena on him and we have a subpoena in the hands of the Marshal, when we locate him—and then, the attorney on one occasion told me that he would appear with Mr. Upton, accompany him, if we would pay the attorney a per diem, and we asked the attorney how much he wanted, and then he apparently changed his mind and said he would not come but that he would produce Mr. Upton in connection with his personal injury suit and injury trial. Until the present moment we have not been able to locate the man at any of the sailors' places up there and I have an investigator out trying to find him, but, of course, because of the nature

of his abode, why it is very difficult to find him unless you know him. I don't have a photograph of him. I have seen him personally, of course, and we have examined him before trial, but it hasn't been possible to get —

THE COURT: What was his position on the WASHINGTON?

MR. BRUSH: He was the lookout and Your Honor will recall that he filed a suit against the Texas Company and that suit is pending, but was on the consolidated, with this trial for trial.

THE COURT: Well, in his absence you are going to introduce the deposition?

MR. MCGOVERN: His Coast Guard testimony.

THE COURT: That is agreeable?

MR. BRUSH: That is agreeable.

THE COURT: All right. Let it be admitted.

MR. MCGOVERN: Your Honor, introducing this, I don't want to adopt Upton's statement that he was injured. I don't believe that is required.

MR. BRUSH: Oh, no.

MR. MCGOVERN: No.

THE COURT: All right.

MR. MCGOVERN: Upton's Coast Guard testimony. I think we had better have that marked with a Government exhibit number.

THE CLERK: Government's Exhibit No. 25.

(The Clerk so marked the Coast Guard testimony of Upton as Government's Exhibit No. 25 in evidence.)

MR. MCGOVERN: Then there was a similar —

MR. BRUSH: Just a minute. In connection with Mr. Upton and not for the purpose of confirming any injury at all, I can tell Your Honor that we never were able to get a statement from Mr. Upton so that the *Coast Guard testimony plus my examination of him* before trial which was simply in connection with his injury matter were the only statements that we got. We do, however, have a personal injury report, so-called, that was taken by the master of the WASHINGTON and in the interest of everything there, I thought I would be glad to produce that, if it is relevant or important. These were taken on the day of the collision apparently and it is the only so-called company statement of Upton we have.

MR. MCGOVERN: Would it be agreeable on mine —I will offer it and then we will have it together, actually; this part of the case is a statement of how the accident happened

THE COURT: Attach it to his Coast Guard testimony.

* * * * *

COMMODORE OSCAR SMITH, an expert witness, called by The Texas Company * * *.

(Tr. p..605)

DIRECT EXAMINATION

(Tr., pp. 607 thru 614)

Q. Now you say you graduated in 1908 from the Naval Academy?

A. Yes, sir.

Q. When did you retire, Commodore?

A. June 1st, 1947.

Q. When you first entered the Navy, was the Navy using screens at that time?

A. No.

Q. Are you familiar with the development of the screen as a part of a formation and a naval formation?

A. I am thoroughly familiar with it.

Q. Now would you explain or narrate briefly your experience with these screen formations, Commodore.

A. In telling my own experience regarding screens, I must add and include with it excerpts of the history of the development of the screen because they are intertwined.

As I testified before World War I if screens were used at all, I knew nothing of it. They could not have been very large anyhow because they didn't have sufficient screening vessels in the Navy during World War I. The German policy of unlimited submarine attacks and the necessity of carrying on extensive convoy work brought the adoption of screens as a protective measure and the individual commanders who were directly charged with a convoy escorting work developed their own methods regarding screens. These were hit and miss, but they did some development work under the pressure of war. When World War I ended, the officers of the Navy in their exercises began to think and use screens, and this period lasted when each individual commander, given the problem, would devise his own method of handling the Tactical Command that he took over. I should say that period lasted up until about 1931—1921 to 1931. During that time I had very limited experience with this, only spending two years in the battle fleet on the battleships, and my

experience was solely with the main body and from the main body screening looks very simple.

During the latter part of that period, then around 1928, '29, enough officers, senior officers had realized the importance of screening. New destroyers, fast ones, were coming out, new submarines, and the various cruiser types, and they had to protect themselves. Any formation had to protect itself and they saw this was coming in the next war.

So the senior, certain senior officers began to take extra interest in it. One of these who I think at that time had been Chief of Staff of the Atlantic Fleet had written so much about it and had shown such great interest that I believe that was the major reason for his detail in the Naval War College. From that I had the great fortune to be ordered to the Naval War College in 1932, 1933, when this officer was president of the War College, and during the previous two years the War College had spent its time under the urging of the President, among other important items enveloping screens and the tactics they should employ and the command responsibilities and the methods of control, everything connected with them from the theoretical standpoint, working them out to the maneuvering board. That is an excellent way in which to learn that art.

When I was at the War College during that year, in addition to learning this, I had another fortuitous circumstance. I was in the, what they call the big problem at the College, which is the last one before you graduate, a war problem, and it follows a number of minor ones, and about five major problems, in which all students take part, but in this big problem, which

contemplated war between Japan and the United States, about two weeks after the operations started on the maneuvering board, the Commander in Chief for whom I was acting at that time as Chief of Staff, Commander in Chief of the Forces representing the Japanese Navy—this officer was detached, had been made an admiral, and even though I was only a commander, I was detailed to carry on as Commander in Chief of the Forces representing the Japanese Navy. Part of that good fortune was that the opponent who commanded the forces representing the United States Navy was infinitely superior to me in both rank and sea experience. He was Admiral Ernest J. King who later became Commander in Chief of the United States Fleet and Chief of Naval Operations during the year.

I also had to help out my own experience that time, my scouting commander, the man under my command, the scouting commander, Admiral William F. Halsey, who is not unknown for the part he took in the war. When I left the War College, as we all did, not with a graduation certificate, because they do not give them, but with the diploma which says you have satisfactorily completed the course, I then accompanied the President of the War College who went to sea at the same time as Commander, Heavy Cruisers, and became his Operations Officer.

Q. Was this officer the same officer that had shown the interest in the development of the screen?

A. This was the same officer, Admiral Harris Laning. He, for two years, as Commander, Cruiser Scouting Force, had wonderful opportunities and he took them to try out practically the principles which he had developed theoretically at the War College.

There were innumerable smaller exercises, more grandiose ones, and each year one fleet problem. In all of these he bore, he and his force bore a very prominent part and whenever the Admiral bore the prominent part, I was the working member of the firm, drawing up the operations orders, conferring with his senior commanders, commanders junior to him, and when we were at sea, if he had a command or unit, I was what you might call the permanent staff duty officer. There would be a staff duty officer who is there intermittently, and if the Admiral was not on the bridge, and if there was any likelihood of anything going on, I was on the bridge. I was that way and had gained tremendous experience and took over this rather broad duty because the Chief of Staff of our forces preferred and took over the administrative duties while leaving the operational ones to me.

I would like to make clear that during that period of two years, he acted as Commander in Chief of a fleet in war problem and I was his Operations Officer. He acted as Commander of the main body in certain movements, he acted as Commander of supporting cruisers ready to protect the screen in case of penetration, he acted as Task Commander in charge of screens or portions and the different kinds of portions of screen, because when they are large, they often will break the command up under subordinate commander into sections, and at times we traveled as a, merely a single ship some place in the disposition.

Q. Over how many years did this experience with Admiral Laning cover, Commodore?

A. Three years from the start to the—three years starting from the War College to when I left him, and when I left him, he was then Commander, Battle

Force, and I was Operations Officer, Battle Force, and not with the cruisers.

Q. During those three years and your experience at the War College, were you taking part in the development of the precedents which governed the operation of these screens and the responsibilities of the various members of these formations?

A. During this period not only we, but also the Commander in Chief of the United States Fleet was taking a personal interest in it, and that is exactly what they were trying to do; develop principles and standards of procedure which would enable screen formations to carry out their duties efficiently.

Q. Now, Commodore, in your naval experience from that time down to your retirement in 1947 were the precedents and principles about which you have just spoken, were they substantially changed, sir?

A. I had opportunity to note that practically the answer to that and I would like to give it in a little detail, but I will make it short.

In 1935 I went ashore at the Naval Academy and in 1938 I took command of the HONOLULU which was the light cruiser and the commander of light cruisers flew his flag from my ship, and that ship being a light cruiser, was operating in screens very frequently. The procedures then used, this being three years later than when I had left, were very similar to that which we had established by 1935. There were minor changes, but the basic principles remained the same.

Then I was two years with the HONOLULU and left in 1940, July, to become Director of War Plans, and seven days after I reported—I am inserting this personal item because it deals with my later ob-

servation of the unchanged precepts to which the question referred—seven days later I unfortunately had a coronary thrombosis attack and from which I apparently recovered, but I had great difficulty in remaining on the active list. However, I did remain on the active list during the war, and in during the war, I went on as an observer, not in command, on the amphibious attack on the Palau Islands, being an observer and having been tremendously interested in screens, I took advantage of my time to, among other things, note what the screening procedures were as well as attack procedures. And again, I found though they were changed due to the increased numbers of ships which was far beyond anything I had ever seen, actually the method, the basic principles remained unchanged.

Q. And did that observation remain the same through June, until June of 1947, at the time you retired, Commodore?

A. Yes, shortly after I returned from the Pacific, I went on, became Chief of Staff, Atlantic Fleet, and that carried up until I retired, and there I had opportunity to observe and talk with the people who had been running the screen procedures in the Atlantic and they were unchanged at that time.

Q. Would the principles that you experienced and that you helped to develop, were they any different because the formation happened to be on an amphibious mission than they would be with light cruisers?

A. The basic principles remain unchanged, whether the formation is on an amphibious mission or is cargo convoy-escorted by naval ships, or if it's any formation of say two or more naval vessels.

Q. During this experience did you have opportunity to operate in peacetime at nighttime with normal navigation lights burning?

A. Yes.

* * * * *

(Tr., pp. 622 & 623)

Q. Now do the various officers, to wit, the Commanding Officers of the joining vessel and the two superior officers, are they aware of this change of status, or should they be aware of that change of status?

A. Yes, they should be. Yes, they should be.

Q. Is it important in the Navy that a change in command or tactical command status is recognized clearly by the officers involved?

A. It is vitally important and it is so important that it is one of the things in which all naval officers are indoctrinated repeatedly in their—and they are indoctrinated by custom and, for example, an officer who receives orders transferring him from one ship to another, follows the customary phraseology; detached, meaning detached from the command of this officer on this, such-and-such a ship, proceeds, which in short means proceed independently under your own Tactical Command, if you wish to paraphrase it; report, to some Commanding Officer, and until the moment when he hands those orders in to that officer's representative, he is on his own. When he releases the papers, he is under the command of that man and he can give him orders. The same way with a ship.

Q. Now, Commodore, while the RUCHAMKIN is on this independent mission off Camp Pendleton, would you expect the flagship, the FREMONT, to be interested in her whereabouts?

A. The flagship as O.T.C., casually so because the ship was eventually going to join his formation, but until the work, whatever the RUCHAMKIN was doing, until he had finished that work, his would be merely a casual interest, but the Group Commander, and I understand the FREMONT was flagship of the same man who is Group Commander, he has an interest in that, a great interest, because this ship is doing something which he directed it to do. He wants to know when it is finished and he wants to know what it is doing right up until the time when it rejoins the Tactical Command.

* * * * *

(Tr., pp. 628 & 629)

Q. Now, Commodore, if a vessel approached, as we are told the WASHINGTON did, from up in here and the RUCHAMKIN approached the formation from back in there, as we are told, would it be fair to say that the lights of the merchantman would be merged or confused with the lights of the formation as viewed from the RUCHAMKIN? Would it be easy, or would it be probable that the RUCHAMKIN back in here would see the lights of the WASHINGTON across the formation?

A. Certainly, if the main body was on line in between the two ships her lights would utterly—the lights of the RUCHAMKIN from the WASHINGTON, and the lights of the WASHINGTON from the RUCHAMKIN would be merged, confused, or blotted out.

Q. And would the O.T.C. and the Screen Commander be expected to know that?

A. Yes.

Q. Would a glance at their plot tell them that?

A. If they were in those positions, qualified as I said, that she was on a line between them.

* * * * *

(Tr., pp. 630, 631, 632)

Now the last pargraph, the last question that I asked before the break was if you would describe command responsibility as you deem it to exist with respect to the O.T.C., the Screen Commander and the Commanding Officer of the individual vessel.

A. The O.T.C.—will you repeat the officers?

Q. The O.T.C., the Screen Commander, the Commanding Officers of the individual vessels.

A. The O.T.C. has the supreme command over a formation. Command, that is, Tactical Command; Tactical Command means that he has been granted the authority to use the forces under his command in operations. Therefore, he holds tactical control of the entire formation and all the ships in it. Command gives him such wide authority and such complete authority that with it goes responsibility. He cannot take the command over those forces without holding himself responsible for them. I previously mentioned his responsibility to his superiors to carry out his assigned tasks, and I have previously mentioned his responsibility over those he commanded, to safeguard them, and I would like in answering your question to include a little bit of what this responsibility brings to him in the way of necessary action occasionally.

It involves the primary act of keeping track of every ship in the formation. Not only does he keep that track but the commanders underneath him must keep that track so that they will know where each ship

in the formation is at all times or roughly at all times. But it isn't a running track. It's an intermittent, every ten minutes you take the ships or every five minutes, whichever you regard necessary or maybe every half hour, but it must be taken at such intervals so you know where they are and what they are doing.

Now the Screen Commander has been delegated Tactical Command of the screen by the Officer in Tactical Command. That gives him full command over the screen and full tactical control of them after they come under his command. The individual ships of the Command have their own ships and they use them to carry out their orders just as the Screen Commander uses the ships that are entrusted to him to carry out his orders and just as the Officer in Tactical Command uses the formation to carry out his order, and in so doing, the Commanding Officer of the ship has the responsibility to do this so that all the men under his command are safeguarded, so that the ship may merge in the operation ready for the next operation or the next task assigned. That about covers their responsibility to each other.

Q. Now, Commodore, you have spoken there of the responsibility of the O.T.C. to the vessel in the formation. Now in this particular case we have a screening ship, the RUCHAMKIN, which has—is not on station, but has been directed by the Screen Commander to proceed to a position from which to take her station. Now what sort of a status would she be in?

A. She's under command of the Screen Commander. She's in the status, because she has reported to him and he has given her an order, therefore, she's

in the status of a ship of the screen that is not in position or as they term it in the Navy, ship out of position.

Q. A ship out of position. And you have said that she's also under the Tactical Command of the O.T.C. at the same time?

A. She's under the Tactical Command of the O.T.C. because she's reported to the officer to whom he has delegated the command and that officer has received her as part of his command.

* * * * *

(Tr., p. 642)

Q. That was the next question I was going to ask you. Now in this business of naval responsibility, let me see, you were once the Chief of Staff of the Atlantic Fleet?

A. Yes, sir.

Q. You were responsible as a naval master for a great number of details and ships of which you had no personal knowledge; is that correct?

A. Yes.

Q. Is that customary in Navy responsibility?

A. Oh, yes. When you get high up.

* * * * *

(Tr., pp. 646, 647, 648)

Q. I believe the paragraph that your counsel was referring to is the one which is "n", 4n, and it reads, When under the tactical command of a senior, promptly give notice to such senior and to the ship or aircraft endangered if he finds that the directed course is leading his ship or aircraft or any other ship or aircraft into danger.

A. Yes.

Q. Now that has, as I understand it, three conditions; the first condition is when under the tactical command of a senior.

A. Yes.

Q. Now does that mean any senior officer senior to it or just any tactical command?

A. No, it means any tactical commander whom he is actually serving under at the time.

Q. Promptly give notice to such senior. Now that means to the Tactical Command?

A. Yes.

Q. And to the ship?

A. Well—

Q. Yes?

A. No. Repeat that.

Q. Promptly give notice to such senior. The paragraph doesn't repeat senior officer in command. It just says such senior.

A. It is broader than that. My answer, the first one was right because frequently you are speaking of—there may be a senior and may not be called the Tactical Commander. He may actually have the power of a Tactical Commander, but he may not be the Tactical Commander at that moment, and I—you cannot, when you get into points of that nature, differentiate from the man who has the power to take over tactical control at any moment, so when it says a senior, if such a man were around as well as the Tactical Commander, he should, that would cover him, he should report to him or any senior, and you cannot add the words "only the tactical ones".

Q. I see.

A. Only the ones under whom he actually is tactically operating at that moment, I mean.

Do I make myself clear?

Q. I understand it. It's the duty to promptly give notice to a senior of a danger, is a duty which is owed even though the senior is not the Officer in Tactical Command of the group under which—

A. It might be so construed. If he thought that would be the best man to give it to—in other words, that would give him authority to give it to that man. He would give it to the man, one that he'd get the quickest action out of he should give—

* * * * *

JOHN D. CAIN, Master of the SS WASHINGTON, a witness called by The Texas Company * * *. (Tr., p. 656)

DIRECT EXAMINATION

(Tr., pp. 657, 658, 659)

Q. How long have you been employed by the Texas Company?

A. About twenty-six years.

Q. Since you have been going to sea what has been your sea experience?

A. Well, about twenty-five years of that time with the Texas Company it's been as a licensed officer.

Q. And during that period have you sailed around the world or at various parts in the world?

A. I have sailed at various points. I have never been to all the places in the world.

Q. How much of that time have you spent traveling up and down the Atlantic Coast?

A. I couldn't say for sure. I'd estimate at least half of that time, though.

Q. In November, 1952, were you master of the tanker WASHINGTON?

A. I was.

Q. Will you describe the WASHINGTON in a general way, the type of vessel she was, her approximate length, and so forth.

A. Well, she's regular T-2 type tanker, was built by the Government during the World War II. Her over-all length is five hundred twenty-three and a half feet. She is some ten thousand, little better than ten thousand tons, gross tonnage.

Q. Were you master of the WASHINGTON on the night of November 13-14, when she had the collision with the USS RUCHAMKIN?

A. I was.

Q. At that time was the WASHINGTON light or loaded?

A. She was loaded.

Q. What port had she left before the collision?

A. We sailed from Atreco; that is a little oil terminal, belonged to the Atlantic Refining Company on the lower part of the Neches River. We sailed from Atreco about noon on the 9th of November, 1952.

Q. And where was the WASHINGTON bound?

A. We were bound to the Atlantic Refining docks in Philadelphia.

Q. In the course of that voyage would she have put into any port before she reached Philadelphia?

A. No, sir.

Q. Now at the time the WASHINGTON set out on this voyage was there in force and effect on the vessel a certificate of inspection issued by the United States Coast Guard?

A. Yes, there was.

* * * * *

(Tr., pp. 660 & 661)

Q. In proceeding on the voyage from the Gulf up to Philadelphia, will you give us a general idea of the course or route that the WASHINGTON followed?

A. Well, we took departure from Sabine Bar there and came on out until we got out into deep water, past East End Buoy and headed for Tortugas, thence around the Florida reefs there, and up the Gulfstream to Diamond Shoal, passed about eight miles east of Diamond Shoals and from there we set a course by target, lies about forty miles north and slightly east of Diamond Shoal on up to Fenwick Shoals Buoy and thence into the mouth of the Delaware.

Q. Have you been on vessels other than the WASHINGTON and also on the WASHINGTON when the vessels have made voyages up the Coast towards Philadelphia?

A. Yes, sir; many times.

Q. Was the course that the WASHINGTON followed on this night in a general way the same general course that vessels follow on which you have been?

A. It was.

* * * * *

(Tr., p. 662)

Q. How many deck officers were in her complement at that time?

A. We had three regular deck officers and we had one observing third mate that was temporarily assigned there until he could be placed somewhere. He held a master's unlimited license, besides myself.

Q. Excuse me. Will you give us the names of the deck officers on the day of this collision?

A. Well, the Chief Mate was Mr. S. H. Reid. The Second Mate was Mr. O. F. Riche. The Third Mate was Mr. S. C. Williams and the observing Third Mate, I can't recall his name.

Q. And about how many seamen did she have in the deck force?

A. Well, they have three quartermasters, three able seamen, three ordinary seamen, in addition to the day men that done maintenance work.

Q. Now in addition to this deck personnel, did you also have engineer personnel?

A. Yes, sir; we did.

* * * * *

(Tr., pp. 665, 666, 667)

Q. Will you describe the screen arrangement of the bridge of the WASHINGTON as it existed on this night? What did it consist of? Was there an enclosed area and open area?

A. Well, in the center of it, I'd say about one-third of the width of the ship, was taken up by wheelhouse, pilothouse, and on each side about one-third was open bridge.

Q. Were there any openings in the forward part or the side of the wheelhouse? If so, tell us what they were.

A. They are large portholes. I couldn't say the exact size but they are tremendous, probably that much diameter (Indicated.)

Q. How many are there in the forward bulkhead of the pilothouse?

A. Three, I believe.

Q. Are there any on the sides of it?

A. Yes, sir; there's portholes on the sides and also a door on each side leading out to the open bridge.

Q. How many portholes are on each side?

A. I believe there's one on each side right abaft the door that leads out to the open bridge.

Q. In this pilothouse of the WASHINGTON as it existed on this night, what machinery or equipment was there for steering and/or any indicator, or anything like that? Would you please tell us in a general way what you had on board.

A. Well, there is on the starboard side of the wheelhouse up forward part, there is an engine room telegraph for controlling the speed of the ship, and on the port side there there is a docking telegraph, and up on the bulkhead on the forward side above the portholes, there is a rudder indicator and also a revolution indicator up there to indicate which way the engines turning and how many revolutions.

Q. Where was the steering wheel located with reference to the forward bulkhead?

A. Well, it is situated far enough back that there is a very comfortable, wide walkway forward to the wheelhouse, across the wheelhouse.

* * * * *

CROSS-EXAMINATION

(Tr., p. 683)

Q. Well, tell me how your ship got back from o two three to zero zero nine. Did he say back or did he turn back or —

A. Well, I wasn't up there at the time.

Q. No, but you are captain of the ship.

A. That's right.

* * * * *

(Tr., pp. 684 & 685)

Q. Now getting back to your night order book, the one for this particular occasion. You have a sentence here that says, keep a sharp watch for cross traffic and fishing vessels. Now where would the cross traffic have been going that you were referring to?

A. I expected as it is usual there to find that normal traffic in and out of the Chesapeake. They go to Baltimore, Norfolk, Newport News and up and down there, and the traffic is normally pretty heavy in and out of there, the ships coming and going. That is what I expected.

Q. You are referring to the cross traffic of the light ships?

A. That is right; in and out of the Chesapeake.

Q. That's right. Now what fishing vessels did you expect to find there?

A. Well, there's trawlers that operate up and down that Coast in those certain areas. They are up and down there wherever they find fish.

Q. What kind of trawlers, menhaden?

A. I don't know what they catch. They catch scallop, menhaden. I never was on one of them. I don't know what all they do catch.

Q. Oh, you weren't looking for a particular fishing fleet like the menhaden boats or the mackerel boats?

A. I didn't know where we would encounter fishing boats; you encounter them all up and down that Coast there as the sounding water.

* * * * *

(Tr., pp. 691 & 692)

Q. Now what were the actions of Mr. Riche which led you to believe that he needed a sedative?

A. Well, there were no actions there, but I imagine most anybody gets involved in something like that, their nerves would be quite upset.

Q. What kind of a dose of phenobarbital did you give him?

A. Just one tablet.

Q. How many grains?

A. I couldn't say how many grains there are in it.

Q. Where did you get it from?

A. We have it in the medicine chest.

Q. Did you give him this phenobarbital before the Navy boarding party came aboard?

A. No, sir; it was after that; pretty sure of that.

* * * * *

(Tr., pp. 716 thru 719)

Q. Carrying this point further, about being properly manned, Captain, I ask you if you had an ordinary seaman on board your vessel and assume that he had, did he, seeing out of one eye, and this man was put on a lookout position, would you state that your ship was properly manner with such an individual as a lookout?

MR. BRUSH: I object to that as calling for a a conclusion. It is a matter of law for the Court to decide.

THE COURT: I think so. Suppose you prove what the facts are. Then you can argue that it is not a proper manning of the vessel.

MR. O'CONNELL: May I have Upton's physical —

THE COURT: Are you hunting for testimony in the deposition?

MR. MCGOVERN: Dr. Cooper's 35—25.

THE COURT: If it's in there, I say it is something that you can argue from. I do not see any reason to bring it up now.

BY MR. O'CONNELL:

Q. If I was to tell you, Captain, that in the evidence in this case there is a report from the Marine Hospital that your lookout, James A. Upton, was blind in his right eye, and knowing that fact, would you then state that the SS WASHINGTON was properly manned?

MR. BRUSH: Now, if the Court please, I would like to repeat my objection, and in that connection I would alo like to state that medical testimony has been taken, testimony of the physician who made that report in the Marine Hospital, and further I will argue that it does not establish what Mr. O'Connell now says it establishes, and further, I would like to call the attention of the Court to the Section 10.02—9, f in parenthesis, 5 in parenthesis, of the Rules and Regulations for Licensing and Certificating Merchant Marine Personnel, issued by the United States Coast Guard, and that section which relates to examination of seamen, especially AB seamen, states specifically nothing herein contained shall debar an applicant who has lost the sight of one eye from securing a renewal of his license provided he is qualified in all other respects and the vision in his one eye passes the test required for the better eye of an applicant possessed of both eyes—so that I don't see how the Captain is in a position, if the

Coard Guard did not feel that way, that the ship is not properly manned —

THE COURT: Well, I think the question's objectionableness in asking the Captain's opinion — you can prove what the facts are and as I indicated a minute ago, argue to the Court that that shows an incompetency in the lookout, if you think it does show. I do not think you can ask the Captain what he thinks about it. You can ask him what his knowledge is of it, or anything showing a factual situation from which you want to make an argument.

MR. O'CONNELL: Your Honor, I am trying to show that the Captain is in charge of the vessel, has previously stated it is his opinion that it was properly manned. I am just trying to rebut that statement of the Captain.

THE COURT: I do not think you can ask him his opinion as to whether the defect in this man's eye would constitute an inadequacy in the manning of the vessel. That is a matter of opinion.

* * * * *

LEONEL J. FORTIER, radio operator, SS WASHINGTON, a witness called by The Texas Company * * *

(Tr., p. 722)

CROSS-EXAMINATION

(Tr., pp. 730, 731, 732)

Q. Now, Mr. Foitier, you talked about company message. Was there any schedule on which the company would send messages to Texas?

A. No, sir; they might come in any time.

Q. How would you know they were calling for you, if you were off watch?

A. If I were off watch?

Q. Yes.

A. Well, I wouldn't know.

Q. I see. Well, now how would they know when they could get you? Suppose they wanted to get you and they couldn't raise you; what would they do?

A. Well, the company normally expects you to stand watch during the daytime and maybe a few hours after dinner because they may send messages after five o'clock, as they leave the office, and by the time they file and get the company stations, it's usually, gets there by six or seven, and by seven o'clock or thereabouts, if an operator has heard all the traffic lists and the various commercial stations, and there has no message been on any list, well, that's it. You can go to bed.

Q. Let me ask you another question. How does the company work you? From what station do they work your station?

A. They—I was going to say it depends a little bit on where the ship is.

Q. Oh, they—this trip like you were here from the Gulf up to Delaware Bay?

A. Oh, you may be—the WASHINGTON's trip?

Q. That's right.

A. Well, they normally work me, send a message either from Lake Worth, Florida, or possibly Savannah, Georgia, or possibly Tuckerton, New Jersey, or maybe direct from New York. With New York, I wouldn't know. It just, sometimes they come in from one system, that is, Mackey Radio and RCA and the

messages sometimes come in through Mackey, so you have to watch them a little.

* / * * * *

E. BRADFORD TAZEWELL, JR., model builder, a witness called by The Texas Company * * *.

(Tr., p. 733)

DIRECT EXAMINATION

(Tr., pp. 736 thru 739)

Q. Now on this model would the bridge of the WASHINGTON or the position of the eye of the viewer be at any particular place, Mr. Tazewell?

A. Yes, I made calculations allowing for the heighth of the bridge of the WASHINGTON and the heighth of a man on the bridge, it being, I believe, forty-five feet.

Q. Now did you even take into consideration the curvature of the earth?

A. Yes, sir; I did.

Q. Did that have any effect on your problem?

A. Theoretically it should be taken into consideration. Upon investigating this I found that the effect was negligible.

Q. Now as to this frame here, is there some position on that frame at which the eye of the viewer should be located?

A. Yes, sir; where the small pin is located.

Q. That would be right here, would it not?

A. Yes, sir.

Q. Mr. Tazewell, do you produce a pamphlet or a brochure explaining what you have done?

A. Yes, sir; I did.

Q. Is that a copy of it that —

A. Yes, sir. Having determined that scale of all the various ships in this formation, I drew a schematic plan of the ships. Mind you, it is not an accurate plan, but it only shows to this scale the length of it and width of the ships. I located the lights and then I calculated the angle between the line of sight from the WASHINGTON and the axis of the ships itself.

(Handed to the Court.)

This having been determined I could draw an accurate, you might call, elevation of the ship from this angle. This gave me the appearance, the location of the lights at fifteen hundred yards. Now, of course, all the ships weren't at a range of fifteen hundred yards from the WASHINGTON and they had to be altered accordingly. Now the appearance would be a simple mathematical proportion so I altered the appearance of these lights and their relative distance from each other and from the water line of the ship according to the range of each of the ships.

Q. Now, Mr. Tazewell, in order to determine the angle between the axis of the naval vessel or the heading of the naval vessel and the line of sight of someone aboard the WASHINGTON, you would have to know the courses of the ships involved, would you not?

A. Yes, I do.

Q. What course have you used for the two ships or for the group of ships?

A. Well, at any particular time the course of the WASHINGTON makes no difference. However, the course of the Navy ships, I used two hundred fifty-seven degrees for the first two illustrations and the third one is a theoretical illustration. I used two hundred and seventy degrees.

Q. Now, Mr. Tazewell, what sort—you said that this is a mathematical process—is it simply an application of mathematical processes to take that information and results in this display?

A. Yes, sir.

* * * * *

(Tr., pp. 745, 746, 747)

BY MR. CRENSHAW:

Q. Mr. Tazewell, you have placed two boards, two cardboard pieces in here with paper clips or clips at the top and little dots of light. Now as I have indicated these are marked on the back zero one five five.

A. Yes, sir.

Q. What, Mr. Tazewell, would this represent then as it stands at this moment?

A. That would represent the location of the lights on the ships in the naval formation as viewed from the bridge of the WASHINGTON at a time of one five five. In other words, it is a simple mathematical location of it, these lights from a point on the bridge of the WASHINGTON.

Q. Now I notice that some of these dots are larger than others of the dots. Why is that, Mr. Tazewell?

A. That is to give an indication of the relative distance of the various ships, some of them being closer than others.

Q. Have you attempted here, however, to plot a light which would appear, which would accurately represent the appearance of a light in brilliance at any particular given range?

A. No, sir; that would be impossible in any medium.

Q. So that you have merely made the lights smaller or larger as their respective distances would be and they have been accurately positioned?

A. Yes, sir.

Q. Now is the same situation true with the other two exhibits, the one at zero two zero two, when the WASHINGTON, when the naval vessels were on two five seven and the hypothetical exhibit, which would be in the event that the naval vessels had remained on two seven o?

A. Yes, sir.

Q. Now we have moved, if Your Honor please, to a point where we would like to have either—use the exhibit or bring on testimony. In other words, we now have the exhibit Stage 1 setup. We would like to have the Court view this; if Mr. McGovern wants to cross-examine before the Court views it, it is perfectly all right, but we have the first stage set up now for view. We will do exactly the same thing to produce the second stage which is the same situation only some seven minutes later.

THE COURT: Well, my thought was to get all the testimony in that is necessary and then I would view it. Either put it in Chambers or put it in the jury room, or somewhere where you will all be present and then we could get the court reporter in a position to hear it better.

MR. CRENSHAW: Fine.

THE COURT: So suppose you; Mr. McGovern, do you want to cross-examine this witness up to this point, or —

MR. MCGOVERN: Your Honor, there is absolutely nothing on which I can cross-examine this witness up to this point.

* * * * *

(Tr., pp. 775, 776, 777)

PROCEEDINGS

(In Chambers)

THE COURT: What testimony did you want to take this morning in here; anything other than —

MR. CRENSHAW: There is one thing we didn't cover in getting—there are three boardss, three sets here. We have covered two of them. We haven't covered the third. It will take just a couple of minutes to have Mr. Tazewell explain what he did for the third. I suppose we should do that probably before they are viewed.

THE COURT: All right.

Thereupon, E. BRADFORD TAZEWELL, JR. having been previously duly sworn, testified further as follows:

BY MR. CRENSHAW:

Q. We could have him —

A. As Mr. Crenshaw mentioned, the first two times I believe, first two displays, rather, already touched on yesterday as being the location, lights at o one five five and o two o two. The second display represents the actual occurrence or the actual appearance, location, rather, at two o two, the Navy being on a course of two five seven.

The third display represents what the naval ships' lights, or where they would have been located had the Navy remained on their course of two seven o.

Q. In that connection, Mr. Tazewell, would that third situation be representative, if the WASHINGTON did what she in fact did do, but the Navy had instead of at zero one five o, instead of changing course to two five seven, had continued on two seven o?

A. Yes, sir.

Q. How, Mr. Tazewell, did you arrive at the positions, respective positions of the vessels for this third or hypothetical situation?

A. By plotting it on a maneuvering board and also made allowance for the slight error in plotted position and actual position and assumed that the error would be similar in this case.

Q. Now you speak of an error between plotted position and actual position. By that do you mean, could you explain that a little bit? Did you compare, did you have a previous actual position and a previous plotted position to compare one another with?

A. Yes, sir.

Q. Now were they based on the two five seven situation?

A. Yes, sir.

Q. In other words, did you plot from a given time such as one-fifty up to two o two?

A. Yes, sir; was based on one-fifty.

Q. And then was the first thing you take a true or perfect situation on the maneuvering board for the situation where the Navy was on course two five seven and then plot that for a given number of minutes and get a position where they should have been at two o two similar to dead reckoning?

A. Yes, sir.

Q. Then by vision of the radar plat did you see that that position at two o seven was slightly different from your dead reckoning position?

A. Yes, sir; it was several hundred yards to the southeast, actually. I have forgotten the exact amount.

Q. Did you go through a similar procedure for the hypothetical, if the Navy had been at two o seven?

A. Yes, sir; I did.

Q. Did you similarly offset that DRT, or dead reckoning position by the southeasterly error?

A. Yes, sir.

Q. All of the other aspects of the third display are the same as the first two then, are they not?

A. Yes, sir. It is a purely mechanical and mathematical procedure.

* * * * *

OLIVER FRANCIS RICHIE, mate on watch, SS. WASHINGTON, a witness called by The Texas Company * * *.

(Tr., p. 750)

CROSS-EXAMINATION

(Tr., p. 804)

Q. Well, now, those are the only two physical examination records with which your counsel have provided me. Do you have any other physical examinations conducted by the company?

A. Not conducted by the company, but I had never been sick while working for the Texas Company, and they had no reason to call for a physical examination for themselves, but every six months I have on record in my home town and also in New Orleans where I have been taking examinations and changing

my glasses and getting a thorough physical examination.

Q. Now you are wearing glasses now?

A. Yes, sir.

Q. When the last medical examination you had before November, 1952?

A. Before November, 1952,—well, I went on the WASHINGTON about August of 1952 and I had, I was on a vacation preceding that, and I had my own physical examination then. I had my own doctor and went through his office and got a physical examination, and concerning some X-ray pictures of my feet and everything else.

Q. What was this doctor's name?

A. Dr. Willoughby.

Q. Where is his office?

A. Groves, Texas.

* * * * *

(Tr., p. 806)

Q. What was the reason for your nausea, if you know?

A. I just told you, was my nervous system, my stomach was nervous after the collision, and I was a little nauseated afterwards, but I never did get really sick from it.

Excerpts from Record of Conference in Washington, D. C. on August 17, 1955

MR. CRENSHAW: Then the other two things which we have before us would be The Texas Company's request for the transcript of the testimony before the Navy Board of Inquiry and the request for production of documents or statements, and so forth, by the United

States. We can take them up in the order named, or vice versa, whichever way you prefer.

As far as our motion for the production of the testimony, we feel that we are entitled to it for the reasons set out in our affidavit.

I understand, by the memorandum that you have filed, that you do not consider that we are entitled to it and it may be that the simplest thing for us today is to pass it on to Judge Bryan, but if we could dispose of it, I would very much appreciate it.

I noticed one statement that you made, if Hirshman, if you took his testimony as your witness, you would have available his testimony at the Court of Inquiry. That, to me, would indicate that you do not object to the introduction of this testimony into the evidence of this case on any confidential or any privileged basis, and I really don't see what other basis there would be for the objection of it now.

MR. MCGOVERN: Mr. Crenshaw, we are trying to run a government and we are trying to run it in a consistent and orderly way. We have with your office in the past, in the case called the Oregon-New Mexico, gone up to the Court of Appeals for the Fourth Circuit and have been told by the Fourth Circuit, in an opinion which was objected to by your office, to be taken to the Supreme Court, precisely what we are trying to do and we are trying to do in this case with respect to the witness Hirshman and with respect to each one of the other witnesses who testifies, that we wish to do what the Court of Appeals in the Fourth Circuit said was a very handsome thing.

We wish to make sure that we give you these statements of the witnesses at the time they testified. We

don't do this because of privilege or discovery, we do this because the Court of Appeals for the Fourth Circuit says that is the right way to handle it.

MR. CRENSHAW: Will you produce at the trial the testimony before the Navy Court of Inquiry of every witness you have at the trial?

MR. MCGOVERN: Sure.

MR. CRENSHAW: And you will produce the testimony before the Navy Court of Inquiry, the testimony of every witness whose deposition was taken?

MR. MCGOVERN: We did that right along.

MR. CRENSHAW: No. For instance, Commander Nelson tsetified that he testified before the Court of Inquiry and we have never seen it.

MR. MCGOVERN: I have no difficulty about giving you Nelson's testimony.

MR. CRENSHAW: We have, as I understand it, and you gentlemen are more learned in the law than I, but I understand that we have a right to examine a witness before trial, even if he is going to testify at the trial.

MR. MCGOVERN: Yes.

MR. CRENSHAW: We can go ahead and move to examine each of these witnesses that you have indicated to us testified before the Court of Inquiry. If we did that and examined him, I understand then, according to your present position, that we would at that time be furnished a copy of transcript before the Court of Inquiry?

MR. MCGOVERN: That is right.

MR. CRENSHAW: Why, Mr. McGovern, put us to the expense of actually calling those witnesses beforehand and why not give us the testimony?

MR. MCGOVERN: Let us go a little further. The one case of the witness I do remember was that fellow named Libby who was up in the State of Maine. Libby was the only witness I had any recollection of who had testified before the Navy Court of Inquiry and not before the Coast Guard.

We had Libby's testimony declassified, taken out of the Board investigation, and we were prepared to go up there to show Libby his previous testimony before he testified, to show you his previous testimony before he testified.

MR. CRENSHAW: This is the first time we knew that.

MR. MCGOVERN: In the place of that, Mr. Brush went around and had conversation with Mr. Libby.

MR. CRENSHAW: Mr. Libby is a witness to the facts.

MR. COLBY: He is explaining what was done.

MR. MCGOVERN: We are trying to explain that we are trying to run an orderly system.

MR. COLBY: The courts are full of evidence of what this procedure is and, as the Fourth Circuit said, it is handsome or something of that sort.

MR. CRENSHAW: I understand that if we go back and examine before trial each of the men who testified before the Navy Court of Inquiry, we will then be afforded a copy of that person's testimony?

MR. COLBY: So will we. We will then, just like you, see that document for the very first time because that is not available to us except for this express purpose and if you will qualify the situation so that we can see it, you can see it, too. But, unless you do it that way, we can't see it so you can't see it.

MR. CRENSHAW: For instance, let's take Lieutenant Nelson. We have examined him. We examined him in Alexandria and we asked him if he testified before the court and he said yes, he did.

MR. COLBY: I don't know anything about that.

MR. CRENSHAW: We have asked a year before that for the record.

MR. COLBY: That is right, and it's not available to us and not available to you. You read your cases and you will see how it's done.

MR. CRENSHAW: Then the thing for us to do is to file a motion for the examination of these witnesses before trial?

MR. COLBY: If you think it's worth while, I guess it is.

MR. CRENSHAW: And you will provide us at that time with that witness's testimony before the Navy Board of Inquiry?

MR. COLBY: That is what we have always done in the past.

MR. MCGOVERN: We did that in Oregon-New Mexico case.

MR. COLBY: Commander Blocher says we are being too loose, we do that when the witness is produced. In other words, I am short circuiting the process. I was assuming that yes, when you took the man you wouldn't count it as taken unless he arrived.

MR. CRENSHAW: What is the reason, if I may be naive enough to ask, that there is such a strenuous opposition to the production to us of that testimony without the attendant expense of taking the deposition?

MR. MCGOVERN: Mr. Crenshaw, we have a brief.

MR. CRENSHAW: Just answer that question.

MR. MCGOVERN: We have a brief.

MR. CRENSHAW: Would you mind putting it in a short sentence so I can grasp it?

MR. MCGOVERN: We will put it in the court house where the judge can grasp it.

MR. COLBY: Oh, well, let us say that these are not claim examinations, they are not gotten up for this purpose, they are not available to defense counsel, and this is the way it's done. You see, we won't see them—

MR. CRENSHAW: In other words, you can't get them from the Navy.

MR. COLBY: No, we can't get them from the Navy. We have no right to these. Historically, Mr. Crenshaw, as you should have learned in the Navy, the conception was that you were asking the witness to testify freely and that he was supposed to say, "Sure, the reason the ship went on the sandbar is that the old man went hard right instead of hard left," and that the junior officer wouldn't testify freely if he didn't believe that the testimony was going to be in all respects confidential and not passed around.

Now, a lot of this, through a period of time both in England and the United States, it has gotten all cut up because we now litigate these matters of military conduct and some kind of compromise has to be worked out. Whether we like it or not, as a historical evaluation this is the compromise which has been worked out and this way we can do it, this way you can do it.

Don't tell me it doesn't make any sense; I think it does make some sense.

MR. CRENSHAW: The Department of Justice, then, has no objection to the production of these things

except for these historic reasons and the compromise situation?

MR. COLBY: The Department of Justice has nothing whatsoever to do with this.

MR. CRENSHAW: I understand, so you can't object to it.

MR. COLBY: We have to object in the sense that we represent the government with a capital G. In other words, this is this whole problem that you get in personal injury cases; why should the taxpayer, the fiscus, be immersed in damages because the Secretary of State or the Secretary of the Treasury says, in his wisdom, "I cannot produce this document because I may not safely do so. It will adversely affect the relations of the United States." Not the national security, "It will adversely affect the relations of the United States because we obtained this information in confidence from the British or French and we have promised not to produce it."

MR. CRENSHAW: Excuse me, I don't mean to cut you off, but could I ask Mr. Hayes a question?

MR. MCGOVERN: Sure.

MR. CRENSHAW: Is there any way that we can get this transcript short of moving to examine these people before trial?

MR. HAYES: I am wondering whether you understand what the explanation was.

MR. CRENSHAW: It seemed to me it was two things.

MR. HAYES: It wouldn't be necessary for you to, as I understand, take a deposition.

MR. MCGOVERN: The fifteen men we are going to produce.

MR. CRENSHAW: But they give it to us the day of the case or during the course of the trial.

MR. HAYES: That is right.

MR. CRENSHAW: My understanding of discovery procedure is that it is designed to get the facts out prior to the trial so that the trial can be more intelligently handled. That is what we are trying to do. We are not trying to get these things at the trial, we are trying to get them before the trial.

There may be witnesses, Mr. Hayes, that this stuff will show should be produced and there may be questions we want to ask some of these people. There may be information in there that we don't have and haven't been able to develop, mythical standard naval operating procedure, spelled out in it. But what we are trying to do is to get that prior to the trial.

Now, is there any way we can do it?

MR. HAYES: I had overlooked this fact that that record is classified. There will be a question of getting each declassified as he is called.

As a matter of fact, we can say that you can have Jim Smith but you can't have John Brown.

MR. CRENSHAW: If you can give us one Jim Smith, we would have one more than we have now.

MR. COLBY: The difficulty is that this is not a matter of discovery. These things are not produced at all on discovery but, in order to assist in the taking of the testimony of the witness, at the time the witness's testimony is taken, the previous testimony is brought down and showed to, one, the witness to refresh his recollection so that he will know and, two, the two counsel who are going to cross-examine him so that counsel and the witness, both counsel and the witness,

may all proceed to retake the testimony in the light of what was done before so that they will be able to cross-examine him both on what he says that day and on what he said previously. But this has nothing to do with discovery.

On discovery we do not produce these, we produce these as an aid to trial procedure.

Now, as you have said, you can short circuit this a little bit by taking the deposition of the man in advance and our position has always been, and that of the Navy, that the Navy has assisted us; that there is no sense in taking the man's testimony in advance without having the previous testimony and then take him again the day of the trial with the previous testimony.

MR. CRENSHAW: Yes.

MR. COLBY: I don't think the game is worth the candle.

MR. CRENSHAW: We don't know that.

MR. COLBY: We don't know either.

MR. COLBY: We can't do it until you have asked for it in this form.

MR. CRENSHAW: One more question. In order for the witness to have this before him so that he might have the stuff declassified, I mean so that he can refresh his recollection, it would have to be declassified?

MR. BLOCHER: Yes.

MR. CRENSHAW: That procedure isn't done the morning of the trial, is it?

MR. COLBY: It's just a question of time. I can conceive of it being done the morning of the trial if it's done at the Naval Gun Factory.

MR. CRENSHAW: Even if it were, and I wouldn't think it would be, but even if it were, you have a necessary classification before it is done. You contemplate producing the witness and producing the statement; therefore, you must contemplate the declassification; that is, as of, say, September 25.

What we are asking you to do, and what I understand the Department never does, is to declassify prior to September 25. Mr. McGovern says what my office has done in the Oregon-New Mexico case. There is one significance in this case and that case; we lost that case and we don't intend to lose this case.

MR. COLBY: That was a good case, Mr. Crenshaw, so there is no reason to believe the result will be the same.

MR. MCGOVERN: Let me get my little point in because I want to refer to what Judge Bryan had in the letter.

Judge Bryan did not sit in on the Oregon-New Mexico case so, consequently, what he knows about it is by virtue of briefing. He did sit in on the HAITI and DUKE OF YORK.

There, you may remember, we were the moving party for an investigation which your office maintained was confidential aand belonged to the British Government and which you would not give up. Finally, Judge Bryan said you would have to give it up or take the consequences. Finally, the British Government decided to turn it over.

At that time Judge Bryan wanted to know, and took it up with us right then and there, whether, if the testimony before the British Government Investigation Board was available, whether we would also make

available the testimony of our witnesses before our board. Now, by that time I had a certain advantage that I do not have in this case. I had talked to our witnesses and I knew that none of my witnesses had any personal feeling that his career would be endangered because of some comments which he may have made when he was on guard as a junior officer in the course of one of these investigations where the Navy says, "Tell us all, Son, and nothing you say will be held against you."

I was aware of that problem and my people had apprised me of it so I was prepared to make a decision, knowing that the witnesses I was going to call would not regard me as having sold their career down the river for a particular case.

We proposed at that time to exchange witnesses for witness. That is all in the transcript of the DUKE OF YORK, and I am sure the judge remembers it very well because, after I exchanged witness for witness with Mr. Baird, there was some question about whether all the witnesses would be turned over and Mr. Baird said, "No, not the supervisory witnesses", and we didn't turn our supervisory witnesses over either. That was perfectly normal, too, because these government investigations include material which is beyond the scope of the collision itself.

Now, the supervisory personnel are always very difficult about turning over how they run their office. We never did find out what happened to the chart on the DUKE OF YORK and I don't know what the answer is but that is what the judge was suggesting.

If you are willing to do that, if you are willing to exchange your statement or memorandum of your deck

witnesses for our memorandum or our statements of deck witnesses, we can go around and make preliminary inquiry with the witnesses and see whether they have any objection.

So far as I can make out from what little information I have, none of our witnesses corresponding to your people would in any way have any real objection to releasing anything they might have told somebody else.

MR. CRENSHAW: The two things, so far as the trading back and forth of witnesses is concerned, I know that any rule of production of a document has to work for us as well as it has to work for you. We don't expect the judge to say, "All right, the Texas Company doesn't have to say word one and the United States has to say everything."

I will say this, in the DUKE OF YORK I don't know what went on in the DUKE OF YORK. Of course it was in the office, Mr. Baird handled it and once again we seem to be on the losing end of it. Again I can't set that case up as a great crystal for us to follow here. It may be precedent if the facts are identical and it may not be.

What I am struck with, and it might be simple-mindedness or youth or something, but there is apparently a willingness on the part of the Navy and the Department of Justice to let us have these statements if we make a motion to examine these witnesses before trial?

MR. MCGOVERN: No, no, no; what we are proposing to do is just what the Court of Appeals for the Fourth Circuit told us to do and that is that when a witness comes up and testifies as to some fact he nor-

mally, if it is four or five years after the event, he refreshes his recollections by looking at the statement his counsel took for him or, in our particular case, by looking at the testimony before a Navy Court or a Coast Guard Court. The witness does this because he does not want to testify now contrary to some statement which he made in the past.

Now, that is a reasonable view, witnesses have always had that and the courts have understood.

In litigation in Philadelphia, I have had situations come up where the judge has required me to turn over to my opponent at the time of the trial the statements which I took or that the members of the FBI took of witnesses. Now, this in Virginia is true with respect to some criminal cases under the criminal rules as here interpreted and that Judge Bryan is also familiar with.

Now, the statement of a witness is not absolute but merely conditional. The reason we don't want to do it except at the time the matter is going before the judge and with both sides producing the information on which their witnesses have been refreshed is quite simply that we want to have the trial as free as possible from the changes in testimony which you get if you work a witness over and examine him and then call him back at the trial again. If you ask the witness four times the same fact and the man is an honest witness, about the third or fourth time he will start to change his answer.

That is a matter which judges understand, too. We have no objection that we produce the witnesses whom you wanted to have us produce at the trial, all fifteen of them. As to any of them who appeared before

the Court of Inquiry, we have asked the Navy to get this testimony declassified. We have no objection to your seeing that at the time we do. We have no intention of seeing that except in court.

MR. CRENSHAW: Do the witnesses whom we have taken, for instance, Commander Nelson, he testified that he read his testimony before the Court of Inquiry.

MR. MCGOVERN: That is right.

MR. CRENSHAW: The situation that you are talking about, the witness is shown the thing and the two counsel are shown?

MR. MCGOVERN: I didn't see it.

MR. CRENSHAW: You may not have, that is your prerogative. The witnesses that we have examined, and so far as I know that may be after their examination they may meet with a truck outside this building today.

MR. MCGOVERN: Yes.

MR. CRENSHAW: Those witnesses have testified in this case for all practical purposes and yet the very thing you say was done was not done. We were not shown the transcript before the Court of Inquiry.

MR. COLBY: Did you ask for it?

MR. CRENSHAW: Yes, sir.

MR. HAYES: None of those testified.

MR. MCGOVERN: Nelson was the only one who testified.

MR. CRENSHAW: I was reading his testimony last night and he said he testified before the thing and I believe he said that Whitehead had, and I am not sure that Whitehead had.

MR. MCGOVERN: No.

MR. CRENSHAW: There you have at least one example of a man who had seen the record. We didn't know about this procedure until this morning.

MR. HAYES: He could have just dropped in the Navy Department.

MR. CRENSHAW: He went to Commander Blocher's office and read it over; that wasn't a very casual way to do it, it was directly in preparation for his testimony.

MR. BRUSH: You see, Mr. Hayes, we had no intention and did not ask for Court of Inquiry testimony because we were hopeful that by answers to interrogatories and the testimony before trial of these Navy witnesses to elicit the facts that we thought were essential to the trial. Now it develops that because of counsel's theory of the case, the log books, various log books of the Navy vessels, were permitted to be destroyed or lost through the course of time. We do not have that information, therefore, which we regard as essential, rightly or wrongly.

Furthermore, the witnesses, upon their examination, proved to be quite helpless because they hadn't read their testimony or because they didn't have their log books. Therefore, many of them who ordinarily would know a lot of the things that we think are important in the case had absolutely no recollection a couple of years later and they didn't have their log books and didn't have their records on which they could refresh their recollection. For that reason, we then made an application for the Court of Inquiry testimony because we felt the omission had to be supplied in some way and it could be supplied, and that is the reason we have asked for it, frankly.

MR. HAYES: I understand that, but you are not going to cure what you consider to be a gap in your case with respect to those men you have already taken because only one of them apparently testified before the Board and there is no record.

MR. CRENSHAW: There are other people that testified before the Court of Inquiry that didn't testify before the Coast Guard. There are some who testified before the Court of Inquiry who are not on this list of fifteen to testify at the trial. Those people might say that all of the Navy ships did some horrible thing, the WASHINGTON was perfect. I don't know what they said but if they did say that, I would be very interested in getting it into the record.

Now, that is the position that I am in.

MR. HAYES: I understand your position.

MR. CRENSHAW: Those people that convened the court presumably knew what people could best give the facts of the whole over-all situation. They called them in, they were examined by people who knew what questions to ask and were experts, and the information was fresh, the records were before them, and it was brand new. It was fine.

These witnesses we have examined in pretrial deposition, and the government has been cooperative in producing them, I don't take that away from them, but they testified fine in describing generally their station on the ship, but so far as what happened on this particular evening, Mr. Hayes, they couldn't be more vague.

Mr. Goode, who is a very scholarly-looking gentleman whom we took up north, couldn't have been more pleasant and couldn't have forgotten more. I don't

think a man like that at the time would have testified like that.

* * * * *

Excerpts from Deposition of James D. Hanlon, OOD, USS GLYNN

(P. 45)

Q. I don't recall whether you have told us what you did after you first sighted her. Would you mind giving us that again, and what was done on your ship? A. When we first sighted her, I can't recall of any specific action until we had this slowing down; the whole formation slowed down. I think the first time I saw her I thought possibly she may have been one of the screening ships.

Q. After you first sighted her did you continue to watch her and, if so, how? A. I continued to watch her as well as the other ships in the formation. I think most of my time was taken up with station-keeping in the formation and I think I just would look over at her occasionally, but I can't say that I gave her particular attention.

(P. 47)

Q. Now are you able to fix the time that the WASHINGTON passed in front of the GLYNN? If you can't fix it in minutes, can you tell us when with respect to, let us say, either the speed reduction to five knots or the resumption of speed to fourteen knots? A. I would say she probably passed ahead of the GLYNN about six or seven minutes after two o'clock. Probably it was— I know it wasn't before—it wasn't after we increased the speed to fourteen knots. When the ship passed the GLYNN, it still had to clear the

NEW KENT which was on our starboard quarter, and I remember we stayed at a slow speed for a short time after it cleared, and I can't recall whether the formation slowed down more in order to let it clear the NEW KENT or not.

* * * * *

Excerpts from Deposition of Edgar Catlin, OOD, USS HOLLIS

(P. 6)

Q. Now, on the night of November 13 and 14, during the period of these maneuvers, was there any other staff or group of men on board the HOLLIS, and if so, who were they? A. Yes, the Squadron Commodore was on board with his staff.

Q. That was Captain Persons? A. That's right.

Q. Did Captain Persons have any permanent attachment to the HOLLIS for his assignment? A. Decidedly so. We were the flagship for them at that time.

(Pp. 12, 13, 14)

Q. Now, in proceeding at sea, as you did that night in simulating wartime conditions, do you in addition to instructions from the screen commodore, following out other orders? I take it there is a plan, for one thing, of operations? A. We don't follow anything except under orders from the group commander. However, we do take care of ordinary ship routine and navigation.

Q. How about courses and speeds, do you follow a general plan or instructions as to those? A. Those would be regulated by the task group commodore, or in case you reorient the screening group by the screen commander: and where you change places in the group,

you would be under instructions by the screen commander.

Q. Am I correct in understanding your testimony that on this night, or previous evening perhaps, when you set out you had knowledge of a general operating plan; that you would proceed out from Little Creek, head out to sea, and at some time turn back toward shore, at which time there would be a mock landing by landing craft with assault troops? A. That's right.

Q. Did that plan, or did any document of any kind, inform you of the general courses or routes or speeds, which would be followed, or did that come later from either the task force commander or the screening group commander? A. I can't recall that. I will say this, we knew roughly where we were going. Everyone knew we were going out to sea X number of miles and turn around and come back, so we would be on the beach at a designated hour.

Q. Now, did you know before you started out, or at the time you started out, this maneuver would be performed or would cover an area in which there might be found coastwise merchant ships? A. Yes, we did.

* * * * *

(Pp. 20, 21, 22)

Q. Now, in addition to that, let us assume a target is sighted, or another vessel is sighted, what is the ordinary routine for handling that problem. A. In a group, you mean?

Q. Yes. A. There would be one designated CIC center among the whole group, and if you picked up a contact you would report that contact to the group CIC; and he would designate a letter for it, say Able or Baker, and he would assign a ship or ships to track

and report that contract to him and all of these would be broadcast to each ship.

Q. That is, the reports of a particular contact would be broadcast on some sort of communication circuit, a common circuit to all ships? A. To all ships, yes.

Q. Was that done on this particular night; in any instance, it would be routine procedure? A. As routine procedure it was, yes.

Q. Did the CIC have any other duties? A. Its major purpose was to inform the officer of the deck about any contacts that were made.

Q. Aside from plotting the course and speed of the target or vessel that is sighted and reporting that, did the CIC have any other duty? A. Well, they recommend course and speed changes at times.

Q. I see. A. They will tell you how close any contact is coming to you from that plot. I would say that just about does it.

Q. Now, as you proceeded this night in performing this maneuver, in your period as watch officer, or officer of the deck, did you receive any communications from the CIC, or transmit any to the CIC, as you recall it? A. I am sure we talked back and forth because it was through the CIC I would know if I was on station or how far off station I was. Also, they would assist me in taking a new station when any change was made. So far as any contact is concerned, I don't specifically remember any contact. I do remember the Texas Oil Company tanker being reported to me.

Q. Before we get to that — A. Before going from that I just want to make clear all contacts were reported to me by the CIC.

* * * * *

(Pp. 25, 26)

Q. Now, I don't think we completed our description of the communications between the various ships, did we? A. No, you picked the hardest question of the day on that.

Q. Well, I think there was some sort of voice radio, was there not? A. That's right, we had one voice radio on the bridge. I assume that was connected to the screen because the commodore was up there and I recall he had to give orders to the screen over that radio. We probably, or possibly, had another voice radio up there connected to the main group, to the man in charge of the whole task force. The CIC may have had another.

We were unfortunate enough to have considerable radio difficulty on board our ship. Consequently at times, when ordinarily we might have one on the bridge, it might be down in the CIC while theirs was out of order.

* * * * *

(P. 37)

Q. What, based on your recollection, was the purpose of those course change orders? A. To assume the new station on the screen.

Q. I see. A. Our captain liked to get places fast, that is why I went up to flank speed, 20 knots, and as we approached —

* * * * *

(Pp. 40, 41)

Q. In other words, in ordinary practice you would receive an order from the screen commander to reorient the screen in accordance with the instructions of the task force commander to the entire formation.

but in order to carry out the maneuver and reach the point of your newly assigned position you do that on your own as officer of the deck? A. That is right.

Q. Then I see an entry at 1:46, course changed to 250, and a speed change which doesn't mean anything to me. Can you interpret that to me, at 1:46? A. To 17 knots?

Q. Oh, I am sorry, yes. A. I can see how you missed that one. That again, sir, is all part of this jockeying myself into position.

Q. Does that indicate to you the HOLLIS was at that time not yet on her new station? A. No, we weren't, otherwise I would be on base course of 270 and going at the same speed as the formation.

* * * * *

(P. 44)

Q. Now, going back to the entries between 1:17 and the 1:49 entry, let us say, those entries indicate that the HOLLIS as she was proceeding, turned from due north to due west and then she went a little bit toward southerly of due west, and then back due west, then again more to the southerly of due west, is that right? A. That's right. In other words, I was jockeying to get my station. I would surmise I had been off on my maneuvering board solution and was trying to weave my way back in to station.

Q. And you also reduced speed down to 14 knots, then up to 20, and further reduced speed to 8 and then to 5 knots, is that right? A. That's right.

* * * * *

(P. 57)

Q. Now, assuming such a closest point of approach was indicated on one of the circuits as at the

CAPRICORNUS, at a specific number of yards, would you regard it as part of your duty, or the duty of any other vessel, to alert the CAPRICORNUS, or would you just assume they had their radar in operation and received that message? A. I myself would not. I would assume three things; one, her own CIC picked up the message; two, that their own radar picked up the ship, and, like ours and other ships, were tracking it for their own information; and three, that the task force commander would, if necessary, order a course change to alleviate the danger.

Q. Do you mean by a course change, a change of course for the CAPRICORNUS or the entire formation? A. Whichever is necessary to keep all ships out of danger.

* * * * *

(Pp. 58, 59)

Q. Have you ever been engaged in maneuvers when picket or other vessels have warned merchant ships of the presence of these Naval flotillas in an area? A. Yes, coming up from Cuba one time on a maneuver, I don't know if we were steaming independently or not, but there was something going on in our area and this ship was coming in, and we went out and warned it away. Now, I have no recollection of the incidents or what led up to it because I think I was just going up on watch, or just coming off watch at the time. But I remember the HOLLIS went out alongside a merchant ship and sent blinker lights to it. I happened to remember it because I was standing down in the forecastle, either just coming off watch or just going on watch.

Q. Did you see any blinker lights sent to the WASHINGTON on this occasion? A. No, I don't

recall that I did. I saw a lot of lights after the collision, but I couldn't read them.

Q. Did you have a blinker light on board the HOLLIS which you could have used? A. That's right.

* * * * *

(Pp. 61, 62)

Q. Suppose the lights of two or more of such vessels merge, then what can you tell about that situation, from observing the lights apparent to you? A. You can't tell much about that.

* * * * *

Q. If I have, I am sorry, I just want to find just what your feeling is. Will you explain it for us? A. Yes, I will. My feeling was, or is, that the officer of the deck on the HOLLIS, after the contact is picked up, reported it to the main body and the captain in my ship. It is not my responsibility to call the admiral or the captain or whoever is in charge of the main group to warn him any further. That was the responsibility of the CIC to report the contact to the main body. After that was carried out it was the responsibility of the captain or the commodore who had charge of the entire body.

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(Pp. 62, 63)

Q. How did you determine these lights you saw were on a vessel that was not part of your formation? A. Because all of our formation was accounted for. In other words, we knew the RUCHAMKIN was coming up behind us. This contact was picked up some miles away, and if she was somebody assigned to

us coming in to join the group, we would have known about it through the captain's order book.

* * * * *

Q. As the WASHINGTON proceeded on her course and the RUCHAMKIN was coming through the formation, they were on crossing courses, isn't that right? A. Yes.

* * * * *

(P. 64)

Q. Do you think the task force commander would be aware of this situation? A. I would rather not answer that.

Q. Well, when you did become aware of it, were those two ships far apart or very close together? A. Very close, in very close proximity.

* * * * *

(P. 68)

Q. Now, did you at the time any of these course changes were made as indicated by the quartermaster's notebook, blow a whistle on the HOLLIS? A. No, not that I remember.

Q. Was it the usual practice to blow a whistle when there was a course change? A. No.

Q. And is that true whether there are any other vessels in the immediate vicinity? A. That is true, we did blow whistles in inland waters.

Q. But not out at sea? A. Not out at sea, no.

* * * * *

(P. 69)

Q. What explantion, if you have any, can you give for the fact that no warning was given to the

WASHINGTON by any officer of any of the ships in this formation? A. I have no explanation whatsoever.

* * * * *

Excerpts from Deposition of Severn Joyce, OOD, USS LLOYD

(P. 23)

Q. Do you know what the Lloyd was doing at that time, what course she was on? A. No, I don't.

Q. Is there any way you can determine that? A. The only way you could find out would be through access to the CIC logs.

* * * * *

(Pp. 26, 27)

Q. Why would you see her port running light?

A. Because she was approaching from my port side.

Q. I see. Have you any recollection now about how far away she was reported to be? A. No, I don't.

Q. Do you know, or can you tell us, what her bearing was from the Lloyd? A. No, except that she was approaching from my port bow, in the general vicinity of my port bow.

Q. Now, at that time, can you tell us where the Corry was from you?

A. I think the Corry had the position in the screen to my port side.

Q. Roughly, about how far away was she off your port side?

A. I have no idea.

Q. Yes. Was she on a line with you or abaft your beam or forward of your beam or what?

A. She was abaft my beam.

Q. Abaft your beam. In other words, this was a bent line screen, so-called; is that right? A. Yes.

Q. But you have no idea how far off she was? A. No, I don't.

Q. Where was the Hollis?

A. The Hollis was in the adjacent position on my starboard side.

Q. Do you recall whether she was abeam of you or forward or abaft your beam? A. She was forward of my beam.

Q. And what was the distance between her and the Lloyd?

A. I don't recall.

(At 3 P.M. a short recess was taken.)

BY MR. BRUSH:

Q. Now, we were talking at the time you stopped about the receipt of the word from the CIC of the presence, the bearing, course and speed of the Washington, and that thereafter you called the Captain to the bridge and he remained on the bridge. Have you any recollection of how far from the Lloyd the Washington was reported to be?

A. At the time of the first report?

Q. Yes. A. No, I don't.

Q. Do you know about how far away she was from the Lloyd when you picked her up through binoculars, roughly?

A. It would be horizon distance at night, which on our ship would be, I think, seven or eight miles. That's a very hazy guess.

Q. Can you give us some idea of the bearing of the Washington when she first appeared to you?

A. As I recall, she approached from our port bow. And that's as accurate as I can be.

Q. Have you any idea of the number of points on your bow?

A. No, I don't.

Q. Or degrees? A. As I recall, it was pretty close to dead ahead, which would make it a very few points off the port bow.

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(P. 29)

Q. Did you read the Captain's night order book before going on watch that day? A. Yes.

Q. And you did call the Captain, and he watched and you watched. Now, what did the Washington do after you picked her up? What did you observe? Can you give us some idea? Tell us what you saw.

A. It is my recollection that the Washington appeared to maintain a steady course—

Q. Yes. A. —which carried her rather close to my bow and down my starboard side.

Q. So that I take it her course must have been at an angle toward yours, or did you change course?

A. I did not change course. I dropped behind station to avoid any possibility of our both meeting.

Q. For about how long a time did the Washington remain in visual sight of you? I mean in sight of where your ship was.

A. I would estimate at least half an hour.

Q. And during all that period you did nothing, and nobody else told you to do anything, about warning her?

A. That is correct.

Q. Did you have the Ruchamkin in continuous view from the time she reported ready to take station until the collision?

A. No. As I recall, the Ruchamkin reported from duty when she was quite far out, from the formation, and I couldn't see her. She was on the opposite side of the formation from our ship.

Excerpts from Deposition of Harry T. Morehead, CIC, USS FREMONT

Q. You are out of the Navy. Do you have any further explanation you would have liked to have made at the Navy Court and didn't have an opportunity to make?

A. No. I felt that the Navy probably picked a very poor site to conduct their operations, in the middle of one of the world's most heavily traveled seaways; but other than that I have no particular comment.

Q. Now, with reference to the Exhibit 1 which has been attached to the Government's answer to interrogatories, which is allegedly a plot of relative movement of formation units and crossing steamers, data obtained from Combat Information Center of Fremont. This plot relates to the situation preceding collision of the Ruchamkin and S.S. Washington at 0125, 14 November 1952, which is signed by Captain Day. I note that the times on the plots on this maneuvering board are 0150, 0151, 0152, 0154, 0155, and then 0202. Does this plot attempt to show all of the plots that you had on it?

A. I believe that is probably an exact duplicate, and all the plots we had on the board at that time are on that.

Q. Of what is this an exact duplicate?

A. Of our plotting board or paper that we had in CIC.

Q. Where is that paper now, sir?

A. I have no idea where it is.

Q. You had no difficulty plotting the Washington at 0202?

A. No.

Excerpt from Deposition of Milton Breece, Shipmaster for Esso Shipping Company

Q. How long have you been associated with Esso Shipping?

A. Since 1933.

Q. Of your knowledge, can you state whether the Esso Shipping Company issued any instructions to the masters with respect to encountering Naval formations at any time prior to 1952?

A. There is no difference in encountering Naval vessels or any other vessels. Our ships are required to comply with the rules of the road.

Excerpts from The Texas Company's Request for the Admission of Facts addressed to the United States

REQUEST TO ADMIT AND ANSWERS

1. Q. During the early morning of November 14 1952 a collision occurred between the SS WASHINGTON and the USS RUCHAMKIN some fifty to sixty miles off the Virginia Coast. The night was dark but clear and the sea was calm.

A. Admitted.

2. Q. The SS WASHINGTON is a T-2 type tanker of 10,195 gross tons; 504' length; 68.2' beam;

39.2' draft; 6,000 horsepower and 14.5 knots full speed; and is a single screw vessel with one rudder. She was loaded with a cargo of refined petroleum products and was proceeding in a northerly direction along the customary merchant shipping lanes en route to Philadelphia, Pennsylvania, from Atreco, Texas.

A. The SS WASHINGTON (ex CONTRERAS) is a T-2 type of SA-1 tanker of 10,195 gross tons, 523' in length; 68' in beam; and 39.3' in depth; with engines of 7,240 h.p.; and a designed normal speed of 14.5 knots and is a single screw vessel with single rudder. She was loaded with a cargo of refined petroleum products and was proceeding up the Atlantic coast in a northerly direction from Atreco, Texas, which is near Port Arthur, Texas, where she departed on November 10, 1952, bound for the Delaware River.* (*The Register of Tank Vessels of the World gives the length of the WASHINGTON as 523½', which is the length testified to by her Master at page 7 of the Coast Guard investigation held on 17 November 1952. This differs from the 504' given in the Notice to Admit. The Register of Tank Vessels and the Maritime Commission files on the vessel at the time she was owned by Maritime give her depth at 39.3'. This differs from the Notice to Admit which gave her 39.2' *draft*, apparently a misprint for "depth". The draft of the vessel testified to by her captain at the Coast Guard hearing was 30' forward and 30' 6" aft (p. 6). The 7,240 h.p. were the h.p. that she had when she was owned by the Government, and differs from the 6,000 h.p. mentioned in the Notice to Admit. The vessel was designed to make 14.5 knots, which is given as her "average speed loaded" in the Register of Tank Vessels of the world, which is identified as "normal

cruising speed" of 14½ knots by her captain at page 9 of the Coast Guard investigation. This differs from the Notice to Admit in that paragraph 2 characterized the "average speed" as being the equivalent to *"full speed"*. The log book of the vessel actually reads, "From Lake Charles, La., via Port Arthur, Texas, towards Philadelphia, Pa." Her radar log shows that she departed Sabine Pass on November 9. She was going to Atlantic Refining's docks on the Delaware River, near Philadelphia.)

3. Q. The officer complement of the WASHINGTON consisted of her master and three mates and her steaming watch of her second mate at the conn, an AB at the wheel and an OS on lookout, in addition to the engineering watch. She was equipped with a radar set which was in operation, and with visual signal apparatus on her yardarms which could be operated from a key in the pilot house.

A. The *deck* officer complement of the WASHINGTON consisted of a master, three mates, one radio operator; and her steaming watch consisted of her second mate at the conn, an AB at the wheel, and an ordinary seaman (OS) on lookout, plus an AB and standby, in addition to the engineering watch. She was equipped with a radar set which was in operation. ("Paragraph 3 has been rewritten so as to limit the statement to the deck officer complement since the Notice omitted the engine room officers; to add the radio operator, who is now a staff officer; to add the AB on standby, who was actually on watch; and to omit the portion about the "visual signal apparatus on her yardarms which could be operated from a key in the pilot house" as not being a matter brought out at

the Coast Guard hearing nor in any way known to the Government without interrogation of the Master.)

4. Q. The USS RUCHAMKIN is a naval vessel designated as a high speed transport with length of 306'; beam 37'; draft 20'; and displacement of 1,650 tons. At the time of the collision she was steaming in a westerly direction as part of a task group of eleven naval vessels of various types as hereafter described which was engaged in an amphibious training maneuver designated as "Operation Seascape."

A. Admitted, with a change in the displacement to 1,315 tons, which is that given in Jane's Fighting Ships, and with a correction of her draft from 20', as stated in paragraph 4, to 11'6" forward and 13'9" aft, which is the draft at the time of collision given by the commanding officer at page 197 of the Coast Guard investigation. The beam of the RUCHAMKIN is 36'11½", as given in the same place, which is sufficiently close to the 37' of paragraph 4 so that, unless it becomes material, there is no need to be more precise.

5. Q. This training maneuver was planned in advance by the staff of the Commander Transport Division 22, and the details of its execution were set forth in a paper known as the "Operation Order".

A. The training maneuver was planned in advance by the Commander Amphibious Training, Atlantic Fleet, which was abbreviated as "Comphibtranlant." This command was in charge of amphibious training in the Atlantic Fleet, and at the time that the training maneuver was directed it was in command of Rear Admiral August J. Wellings. The staff of the Commander Comtransdiv 22 was a staff within Comphibtranlant. The planning was actually done ashore

before the vessels or the troops arrived in Norfolk. The Army part of the plan appears to have been done at the Pentagon, which, on August 25, 1952, issued a Defense Department release outlining the exercise." ("Paragraph 5 has been rewritten to conform to the command facts. When the plans were issued to the vessels afloat they were issued through the command officer, Transdiv 22; but the plans were not drawn up by the commander of Transdiv 22).

6. Q. The maneuver as planned and carried out consisted in part at least of a mock assult by combatant troops upon the Virginia Coast in the vicinity of Camp Pendleton, slightly to the south of Virginia Beach. These troops were to be carried on board assault naval transports from Norfolk some fifty to sixty miles out to sea (across the coastwise merchant ship lane) and thence back toward the coast to a point off Camp Pendleton where they would be loaded into small boats for the actual landing.

A. Admitted except for the phrase, "across the coastwise merchant ship lanes", there being no proof that there are established merchant ship lanes such as those across the North Atlantic.

7. Q. Pursuant to the operation plan and in preparation for the landing, naval ships in at least two main groups put out to sea from Norfolk on the afternoon of November 13, 1952. These groups were known as the "slow movement group" and the "fast movement group."

A. Admitted.

8. Q. The fast movement group consisted of six large or heavy ships and five smaller vessels. After their departure from the Norfolk area the vessels of

this group consolidated and assumed certain designated stations or positions in a pattern prescribed by the operation order and known as a cruising formation.

A. Admitted.

9. Q. Five of the heavy ships were assigned stations on the arc of a circle whose radius was 1,000 yards and at whose center was stationed the sixth, the USS FREMONT. Their assigned positions were fixed with relation to a line known as the formation axis as follows: USS NEWPORT NEWS 000°; USS GLYNN 060°; USS CAPRICORNUS 120°; USS SAN MARCOS 240°; and USS NEW KENT 300°. As the formation axis was 210° T., the true bearing of these vessels from the center of the circle, or the guide, was supposed to be maintained as follows: USS NEWPORT NEWS 210°; USS GLYNN 270°; USS CAPRICORNUS 330°; USS SAN MARCOS 090°; and USS NEW KENT 150°.

A. Admitted as a general statement with the provision that the phrase, "supposed to maintained" is qualified to add "within normal ship handling limits." As a general plan or as a desired plan, the statement is correct, but as being actually maintained by real ships in a real ocean, the Government expressly points out that this is a paper plan and that at no time in a real operation would all of the vessels be likely to be precisely where they would be shown on the paper plan. This objection carries over to all of the Notice to Admit paragraphs which involve planned positions of formations.

10. Q. Four of the smaller or screening vessels were positioned out in front of the heavy ships in what was known as a bent line screen. Their assigned posi-

tions with relation to the screen axis as to bearing and to the center of the formation or guide as to range were as follows: USS HOLLIS, Station No. 1, bearing 033° to the right of the screen axis—range 3,700 yards; USS LLOYD, Station No. 2, bearing 033° to the left of the screen axis—range 3,700 yards; USS O'HARE, Station No. 3, bearing 075° to the right of the screen axis—range 5,900 yards; and USS CORRY, Station No. 4, bearing 075° to the left of the screen axis—range 5,900 yards.

A. Admitted, with the same qualification relative to paper plans and actual performance as is stated in paragraph 9.

11. Q. The fifth screening vessel was the USS RUCHAMKIN and in accordance with the provisions of the operation order she had proceeded during the evening of the 13th on an independent mission or maneuver which was part of the operation plan and from midnight until 0145 was maneuvering to rejoin the task group. The operation order called for the RUCHAMKIN to rejoin the formation about midnight.

A. Admitted, except as to the phrase, "until 0145 was maneuvering to rejoin the task group." The RUCHAMKIN had not yet reached her proper place within the task group although she had, in fact, joined the group at the time specified. The qualification may become important in the course of the trial, and the Government submits that the maneuvers made just before a collision are not facts which can profitably be established short of the testimony of the witnesses in open court.

12. Q. In the performance of this exercise all of the vessels in the heavy ship formation and in the

screen were required to maintain station on the fleet guide (USS FREMONT) and such movements as were necessary to maintain such station were carried out by rudder and engine action of the particular vessels.

A. Admitted, except that the verb "required" should be changed to "supposed" and that the phrase "without further order as part of normal station keeping" should be added after "vessels."

13. Q. If the vessels in the formation maintained their assigned positions according to the operation plan, the formation would have this approximate appearance from the air above: (Sketch)

A. The bird's eye view of the plan is admitted subject to the qualifications made as to all of these plans in answer to paragraph 9 and to further qualification that the scale does not appear to be precisely accurate. Thus the NEWPORT NEWS which is 716' long, as shown in paragraphs 14(5), is depicted in the diagram as being approximately 500 *yards* long.

14. Q. Attached to this exhibit are photographs of those naval vessels comprising the fast movement group which show the position of the navigational lights of the vessel with the height above water of each light, and bear an exhibit number corresponding to that set out hereunder before the name of the respective vessels. The description following the name of each vessel is an accurate brief description thereof:

(1) USS FREMONT, APA 44: designated an attack transport; length 492'; beam 69½'; draft 26'; displacement 16,100 tons.

(2) USS GLYNN, APA 239—: designated an attack transport; length 455'; beam 62'; draft 24'; displacement 12,450 tons.

(3) USS NEW KENT, APA 217—: designated an attack transport; length 455'; beam 62'; draft 24'; displacement 12,450 tons.

(4) USS CAPRICORNUS, AKA 57—: designated an attack cargo vessel; length 459'; beam 63'; draft 26½'; displacement 12,450 tons.

(5) USS NEWPORT NEWS, CA 148—: designated a heavy cruiser; length 716½'; beam 75 1/3'; draft 24'8"; displacement 17,000 tons.

(6) USS SAN MARCOS, LSD 25—: designated a landing ship, dock; length 457¾'; beam 72'; draft 18'; and displacement 4,500 tons.

(7) USS HOLLIS, APD 86—; designated a high speed destroyer transport; length 306'; beam 37'; draft 20'; displacement 1,650 tons.

(8) USS LLOYD, APD 63—: designated a high speed destroyer transport; length 306'; beam 37'; draft 20'; displacement 1,650 tons.

(9) USS RUCHAMKIN, APD 89—: designated a high speed destroyer transport; length 306'; beam 37'; draft 20'; displacement 1,650 tons.

(10) USS CORRY, DD 817—: designated a destroyer; length 390½; beam 40⅝; mean draft 10'; displacement 2,400 tons.

(11) USS O'HARE, DD 889—: designated a destroyer; length 390½'; beam 40⅝'; mean draft 10'; displacement 2,400 tons.

A. Admitted, with the following difference as to the vessels. In each case the Government has given

the figure in Jane's Fighting Ships. So far as the Government can determine, the difference does not appear to be material to the case.

(1) FREMONT—max. draft 28' instead of 26'; displacement 8,650 instead of 16,100.

(2) GLYNN—Length 436' instead of 455'; max. draft 28' instead of 24'; displacement 6,700 instead of 12,450.

(3) NEW KENT—Length 436' instead of 455'; max. draft 28' instead of 24'; displacement 6,700 instead of 12,450.

(4) CAPRICORNUS—Max. draft 24½' instead of 26½'; displacement 6,000 instead of 12,450.

(5) NEWPORT NEWS—Displacement 17,000 tons instead of 17,000 gons.

(6) SAN MARCOS—No change.

(7) HOLLIS—Beam 37' 11½" instead of 37'; draft not believed to be 20' but subject to further verification; displacement 1315 instead of 1650.

(8) LLOYD—Same specifications as HOLLIS.

(9) RUCHAMKIN — Same specifications as HOLLIS and LLOYD.

(10) CORRY — Difference in beam between 40-5 6' and 40 5/8' which does not appear to be material; and lack of information presently available on mean draft of 10'.

(With respect to "draft", the common meaning of this term as given in International Maritime Dictionary, is "the depth of water which a ship requires to float freely." The draft, in this sense, of vessels Nos. 7-11 would be 13'-14", as testified to by the captain of the RUCHAMKIN. The draft of the vessel would

also be influenced by the amount of fuel, water and munitions which she had aboard at the time the draft was taken.)

15. Q. In the execution of this training maneuver the aforementioned naval vessels operated under a distinct and recognized chain of command.

A. Admitted.

16. Q. The United States Navy Regulations which were in effect on November 14, 1952, were issued by the Secretary of the Navy on August 9, 1948, with the approval of the President of the United States and in accordance with the provisions of Sec. 1547 of the Revised Statutes of the United States. These Regulations were issued for the government of all persons in the Naval Establishment.

A. Admitted.

17. Q. Said Naval Regulations provide for the organization of the Navy and establish in the Chief of Naval Operations the authority to set up subordinate commanders of the various fleets, forces, groups or units into which naval vessels might be organized for operational purposes.

A. It is admitted that Sections 0204 and 0204 (1) of United States Navy Regulations read as follows:

0204. SPECIFIC DUTIES. Subject to law and as may be prescribed by the Secretary of the Navy, it shall be the duty of the Chief of Naval Operations to:

1. Direct the movements and operations of the Operating Forces, through the appropriate commanders in chief and other commanders.

18. Q. Operation Seascape was planned by the Staff of Commander Training, Amphibious Forces, Atlantic Fleet (known as COMPHIBTRALANT)

together with a planning detachment from the Staff of Commander Transport Division 22 (known as COMTRANSDIV 22). This latter commander was subordinate to COMPHIBTRALANT, who in turn was subordinate to Commander Amphibious Forces Atlantic Fleet, who was in turn subordinate to the Commander in Chief, Atlantic Fleet, who was in turn subordinate to the Chief of Naval Operations.

A. Admitted.

19. Q. All eleven vessels comprising the fast movement group were under the tactical command of Captain C. N. Day who, with his separate staff of officers and about 50 enlisted personnel, was stationed upon the USS FREMONT. By reason of this, the USS FREMONT was known as the Flagship. This vessel also occupies a position in the center of the formation and so was known as the "guide".

A. Admitted, with the clarification that after the word "FREMONT", when first used in the fourth line of the paragraph, there should be added "in addition to and separate from the regular commanding officer of that vessel."

20. Q. Within the overall command of Captain Day, the vessels of the screen were also under the immediate tactical command of Captain L. S. Persons who was known as the Screen Commander, or COMSCREEN. Capt. Persons and his personal staff exercised this command from aboard the USS HOLLIS.

A. Admitted, with the addition that after the word "HOLLIS", as used in the fifth line of that paragraph, there should be added, "in addition to and separate from the regular commanding officer of that vessel."

21. Q. In the operation order the fast movement group was scheduled to be at a point off Camp Pendleton, Virginia, at 0430 on November 14, 1952. This position was designated as point "YOKE" and was located at latitude 36-48. 9N and longitude 75-30W. Until the formation reached point "YOKE" it steamed on various courses and at various speeds to simulate in some degree at least the actual approach to an assault beach.

A. Admitted.

22. Q. Every one of the naval vessels was equipped with a bridge, from which the vessel was navigated or conned by the commanding officer or the Officer of the Deck (OOD); and with a combat information center or CIC, which was a separate compartment whose funtion among others was the collection, evaluation and dissemination of radar information. Additionally, some of the larger vessels were equipped with a signal bridge and on the FREMONT there was a separate and independent flag bridge.

A. Admitted, with the insertion of the qualification "among others" between "function" and "was" in line 4 of that paragraph since the C.I.C. had combat intelligence functions rather than being merely a large radar room.

23. Q. On the bridge the conning officer is assisted by the following personnel who have assigned to them, among others, the following duties;

Officer of the Deck (OOD)—the safe navigation of the ship, maintaining proper station within the formation, insuring the proper execution of all tactical orders, attending to the execution of the ship's internal daily routine.

Junior Officer of the Deck (JOOD)—assist the Officer of the Deck in the performance of his duties.

Helmsman—steering the ship.

Lee Helmsman—telephone talker and relief helmsman.

Signalman—in charge of visual signals between vessels.

Port Lookout—acts as a lookout on port wing of bridge.

Starboard Lookout—acts as lookout on starboard wing of the bridge.

Messenger—attends to such duties as are assigned by the Officer of the Deck.

Quartermaster of the watch—keeps a contemporaneous record of events such as course or speed changes, etc., in a bound notebook known as the "Quartermaster's Notebook."

A. Admitted as to all save the duties of the Quartermaster of the Watch. It is admitted only that the Quartermaster of the Watch maintains a quartermaster's notebook in accordance with Section 1038 of the United States Navy Regulations which reads as follows:

1038. THE QUARTERMASTER'S NOTE-BOOK. The quartermaster's notebook shall be a chronological record of events occurring during the watch. Entries in the quartermaster's notebook shall be made at the time of occurrence of each event, or when knowledg of such occurrence is first obtained. The quartermaster's notebook shall be signed by the quartermaster of the watch on being relieved.

24. Q. On the bridge of each vessel or in the closely connected or adjoining wheel house, is found the following equipment:

(a) Remote radar PPI scope.

(b) Gyrocompass repeater.

(c) Long Glass.

(d) Binoculars.

(e) Intercommunication system for instant and direct communication with the engine room and CIC of the subject vessel.

A. Admitted, with the substitution of "nearby" for "closely" connected or adjoining wheelhouse. Some of the vessels were being navigated from the topmost bridge, where all of the area is darkened to preserve night vision, and where the communications, although nearby or underneath, are blocked against light. The statement is generally correct but misleading as to operations in the nighttime when the equipment which would need light and destroy night vision should be always kept in a place blocked off from the lookouts and watch officers whose night adaptation should be maintained.

25. Q. A quartermaster's notebook was provided in which contemporaneous entries were made by the Quartermaster relating to the course and speed of the vessel as well as any exceptional events connected with its navigation.

A. It is admitted that United States Navy Regulations provides for the keeping of the quartermaster's notebook as set out in answer 23.

26. Q. A rough deck log was prepared and signed by the officer of the deck at the end of each

watch, based upon entries in the quartermaster's notebook and upon his own recollections.

A. Admitted.

27. Q. The rough deck logs are typed by the ship's yeoman and are then signed by the officer of the deck, the captain and the navigator and are forwarded to the Navy Department for permanent storage. In this form they are known as the smooth deck logs.

A. Admitted.

28. Q. Nearby to the bridge of each naval vessel is an area in which are stored navigational charts and which contains a table suitable for plotting and such other navigational work as might be necessary. Summary plots and maneuvering board solutions can be prepared at these stations.

A. Admitted.

29. Q. Standard Naval Operating Procedure required each of the eleven naval vessels mentioned above to keep complete and accurate voice radio logs, radar contact logs, signal logs, CIC logs, rough deck logs and quartermaster's notebooks.

A. Standard Naval Operatiin Procedure does not exist as a volume. It is a cliche. So far as it relates to vessel operation, it comes under the heading of customs and usages which, as in most professions, vary with the place where the professional man learned his customs and usages. As a profession, there are standard practices just as lawyers have standard practices. In order to determine this, it is necessary to find out just what the practice is. The requirement relative to log books is set forth in the Navy regulations, particularly Regulations 1034 and 1040.

30. Q. Standard Naval Operating Procedure required the maintenance of the aforementioned logs aboard the naval vessels for a prescribed period.

A. Denied. See answer 29. In addition, as part of a post-war reform, the Navy has a provision for the routine destruction of naval records which is set forth in the Records Disposal Instructions for Vessels of the United States Navy.

31. Q. In the event naval vessels are involved in a collision, Standard Naval Operating Procedure requires the preservation of all logs and other records made contemporaneously with the occurrences.

A. Denied. The Navy JAG's instructions require the preservation of all log books of any naval vessel which is, herself, in a collision.

32. Q. The bridge of each naval vessel was equipped with voice radio speakers and transmitters by means of which each vessel could speak to and could be heard by every other naval vessel in the formation. The transmitters were very similar to the ordinary French-type hand telephone and could be operated by pressing a button in the handle and speaking into the mouthpiece.

A. Admitted.

33. Q. The voice radio circuits over which are sent orders pertaining to navigation of the formation as a whole or of the individual naval vessels therein, are known as the primary or secondary tactical circuits. As these circuits are of very high frequency, their ranges correspond generally to the lines of sight, and such circuits are continuously guarded or attended on each vessel.

A. Admitted with the addition that the words "within the limits imposed by the personnel available

on watch" be added after "vessel" in the last line of the paragraph.

* * * * *

36. Q. The CICs of the various naval vessels varied somewhat in design and location, but each contained at least the following equipment:

(a) A surface search radar with PPI (Plan Position Indicator) scope.

(b) Voice radio receivers and transmitters for the primary and secondary tactical circuits and primary and secondary CIC circuits.

(c) Plotting surfaces and boards from which a contemporaneous plot could be made to show either the true or relative movement of a radar contact.

(d) Devices for the display of the formation plan, base course and speed, expected changes of course and speed and the course and speed of their own vessel.

(e) Publication containing standard naval procedure for the operation of CIC.

A. Admitted, as to a-d; but denies the existence of any publication setting forth standard Navy procedure and admits the existence of a classified publication which contains short classified information relative to the combat information as well as secret work.

37. Q. During the times in question the radars in CIC were operating and manned and the radio circuits were operating and being attended or guarded.

A. Admits.

38. Q. By means of the voice radio installed therein, the CIC of each naval vessel could possibly hear messages transmitted by all other naval vessels

and could in turn transmit to each and all other naval vessels.

A. Admitted.

39. Q. The CIC of each naval vessel could communicate with the bridge of such vessel by intercommunication systems, by voice tube or by sound powered telephone.

A. Admitted.

40. Q. The personnel of each CIC varied somewhat with the size of the naval vessel, but in each were stationed at least the following men with the duties set opposite their names:

CIC watch officer or supervisor—evaluate the information received from plots, radar and radio and transmit the same to the officer of the deck.

Radar Operator—to continuously man the radar and give ranges and bearings to objects as directed.

Plotter—to plot the radar ranges and bearings of contacts upon the various types of plotting boards available in CIC.

A. Admitted, with the limitation that the minimum number of three men shown in the organizational plan may at a particular moment not be there or at the precise duty mentioned.

41. Q. After leaving Hampton Roads, this fast movement group steamed for seven or eight hours in an easterly direction at about 12 knots. About 0053 the formation changed course to 000 (North) and about 0116 changed course to 270 (West). At 0134 the vessels in the formation were ordered to and did increase speed to 14 knots.

A. Admitted.

42. Q. These changes in course or in speed were directed by Captain Day who caused them to be transmitted to all the naval vessels in the formation over a voice radio net designated as the primary tactical circuit.

A. First sentence admitted, and second sentence denied. The second sentence contains two hypotheticals. It is submitted that it is not proper, either as a matter of form or substance.

43. Q. At the time a change in course was directed by the commander of the task force, certain, but not all, of the naval vessels were designated to and did acknowledge receipt thereof.

A. Admitted.

44. Q. The course changes at 0053 and 0116 were given by means of two orders; the first "Stand by to execute course xxx", and the second, "execute course xxx", the first message in each instance is transmitted a few minutes prior to the second. In this way all naval vessels in the formation are apprised somewhat in advance of the impending course change, and the screening vessels are given the opportunity to commence their reorientation in the manner indicated below.

A. Admitted.

* * * * *

46. Q. The only notice or warning given merchant shipping of "Operation Seascape" was the following:

"WASHDC CK 63 GOVT R 1214422 BT
GOVT HYDRO ALL SHIPS AND STATIONS BT

HYDROLANT UNNUMBERED X AREA A X VIRGINIA X OFFSHORE X DAY AND NIGHT FIRING AND FLIGHT OPERATIONS ON 13 CMA 14 and 17 NOV IN AREA BOUNDED BY LATS 36-47N AND 36-34N AND LONS 74-30W and 75-30W X SIMILAR EXERCISES ON 16 NOV IN AREA BOUNDED BY LATS 37-30N and 37-02N AND LONS 73-45 AND 74-45W BT."

A. Denied. The Notice was given on two separate broadcasts, one on the 1630 navigational broadcast, and the other on the 0430 navigational broadcast. In addition, Coast Guard Notice to Mariners, dated November 10, 1952, was issued keyed to USC&GS chart 1222 and reading as follows:

> "VIRGINIA — Seacoast. Amphibious Operations to conducted—U. S. Navy advises that on November 14, 1952, amphibious operations will be conducted in the vicinity of the Camp Pendleton Beach Area. Vessels are requested to exercise caution in the area so as not to interfere with Navy operations." (USC&GS Chart 1222)

As far back as August 25, 1952, the Defense Department had issued press releases concerning the training which was scheduled to occur and which did, in fact, occur off the Virginia Capes. In addition, the Government will show at the trial hereof that when the captain of the WASHINGTON retired, four hours before the collision, he specifically warned the mate on watch, by a special entry in the night order book, to beware of crossing traffic.

Excerpts from Government trial Exhibit No. 13, the Flag radio log from the USS FREMONT

0445 O'Hare from commander movement element
Can you identify Group of 8 Skunks South of formation Over

0501 From O'Hare
Roger wait Out

Commander movement element from New Kent
Message follows Am assuming duties of Air Defense Guard Ship . Over

0525 From Commander movement element
Roger . Out

0505 Commander movement element from O'Hare
I identify South as Coral Sea with COM CARDIV 4 Aboard by

* * * * *

Fast movement unit commander screening unit from commander movement element
My intensions are to slow to 5 kts in order to clear for on star hand Over

* * * * *

0541 Fast movement unit commander screening unit from commander movement element
Delay my last Out

0546 Fast movement unit commander screening unit
Execute Corpen Fox 000

* * * * *

0630 Fast movement unit commander screening unit from commander movement element

Speed 14 standby execute Over

Commander movement element from commander screening unit

Understand speed 14 is that correct Over

From commander movement element

That is correct Over

From commander screening unit

Roger Out

Commander movement element from commander screening unit

A Station 1 I intend to form 33C5 in order to admit Ruchamkin to the screen

From commander movement element

Roger Out

Commander screening unit from commander movement element

What does Ruchamkin bear from me Over Wait

0640 Fast movement unit commander screening unit from commander movement element

Execute Corpen Fox 257

All Rogered

Commander movement element from commander screening unit

Ruchamkin bearing 065 from you

From commander movement element

Roger Out

Capricornus from commander movement element

Station

From Capricornus

Roger Out

0650 Fast movement unit commander screening unit from commander movement element

Corpen Fox 257 standby execute Over

From fast movement unit

Roger Out

From commander screening unit

Roger Out

0700 Fast movement unit commander screening unit from commander movement element

Execute speed 8

0706 Fast movement unit commander screening unit from commander movement element

Execute speed 5, standby execute Over

From fast movement unit

Roger Out

From commander movement element

0708 Fast movement unit commander screening unit from commander movement element

Execute speed 14 Over

All rogered

0710 Fast movement unit commander screening unit from commander movement element

Speed 14 standby execute Over

From fast movement unit

Roger Out

From commander screening unit

Roger Out

0715 Commander movement element from Ruchamkin

We have been jammed we sinking help us
Over
Did you get my message we are going to
assistance of Ruchamkin Over

0715

Roger Out

Excerpts from Deposition of Anthony J. Lazarczyk, signalman aboard the USS GLYNN

(P. 12)

Q. Could you outline what your duties were and what the duties of the other man were?

A. We both acted as lookouts, high-powered lookouts. I was the supervisor of the watch. Our watches were concerned with handling traffic by visual methods, flag hoists, semaphore, and flashing lights. That is about it.

Q. You speak of being a high-powered lookout. What do you mean by that, sir?

A. Well, you are supposedly to be a better lookout than lookouts are aboard ship, so they designate you a high-powered lookout.

Q. Is it because of your increased alertness or better equipment, or both?

A. It should be because of your alertness.

* * * * *

(Pp. 23, 24)

Q. Now, do you recall having seen this S.S. Washington on this evening prior to the collision?

A. Not prior.

Q. You did not see her prior to the collision?

A. No, sir.

Q. Do you recall overhearing any conversation with respect to her prior to the collision?

A. No, sir.

Q. What were your duties from, say, quarter of two to two-fifteen on this evening?

A. Just acting as a lookout and looking for any lights for communications.

Q. Well, now, how do you account for the fact that the WASHINGTON crossed in front or is said to have crossed in front of your vessel and to have been visible to several of the other vessels in the formation for some twenty minutes or half hour prior to the collision, and you were a high-powered lookout and never sighted it?

A. I didn't know it was there.

Q. Did you sight a light?

A. There was a lot of lights out there. There was quite a few ships. I didn't have any idea as to which.

* * * * *

(P. 26)

Q. As to these lights you sighted up ahead, could you give me some description of how they appeared to you?

A. Just white lights.

* * * * *

(Pp. 34, 35)

Q. Now, during your watch from, say, a half hour prior to the collision until the time of the collision, would you keep a lookout astern in the direction of the Fremont as well as in other directions?

A. Yes, sir.

Q. Do you remember seeing the flashing light of the Fremont during that time?

A. No, we had no communication with her.

Q. Do you remember any signal being sent from the Fremont to you or to anybody else during that time?

A. It wasn't to us. It may have been to another ship, but it wasn't to us.

Q. Do you remember any signal being sent?

A. I don't.

Q. You do not have any recollection of any signal being sent from the Fremont?

A. No.

* * * * *

(P. 36)

CROSS-EXAMINATION

BY MR. MCGOVERN:

* * * * *

(P. 37)

Q. Addressing your attention particularly to the period before the time you joined this rescue party at the time when you did not know that a collision had occurred, had you sent any messages by flashing light or infra red light?

A. No, sir.

Q. To any ship?

A. No, sir.

Q. Had you received any message by flashing light or by infra red light from any ship?

A. We were not.

Q. Were they using infra red that night?

A. No, sir.

Q. Were you showing running lights on your vessel that night?

A. We were.

Q. Did the other vessels around you have running lights?

A. They did.

Q. I asked you this question but I will ask you again.

Did you receive any message by flashing light from any other vessel before the collision?

A. We didn't.

Excerpts from the Deposition of Edward W. Walthall, ODD, USS HOLLIS

(Pp. 32, 33, 34)

Q. You may refresh your recollection by any other records you have before you in order to recall exactly what the formation and the screen were doing on this night at zero zero zero about one-thirty.

I am interested in getting some sort of a diagram, if you can give it to us, not exactly, but sort of a freehand indication of what type of maneuver the screening vessels would make, what courses they would follow, what turn they would make in getting out from the position that they were in ahead of the main body of zero zero zero to a position ahead of the main body on 270.

A. We would have to go approximately, relatively from here to here, which would require a course of around, course around—

Q. Would you mark thereon "O'HARE", the X means O'HARE, does it not?

A. I put O'HARE 1 and O'HARE 2.

Q. That is right.

A. (Marked the yellow sheet of paper.)

Q. Now the O'HARE is the right-hand screening vessel of the formation out ahead of the formation at zero zero zero in order to get in the same position relatively, ahead of the formation on a course change to 270, she would have to in a general way follow a course indicated by the dotted line on that diagram?

A. That would be the relative movement.

Q. O'HARE 1 to O'HARE 2.

Now similarly the other vessels, other screening vessels would have to make a turn to get to their same relative positions ahead of the formation, but would they follow a same course, or a different course?

A. They'd follow a different course.

Q. And is it a fact that each of the screening vessels would have to follow a course different from the other and proceed at different speeds?

A. Yes, sir.

* * * * *

(P. 37)

Q. Well, suppose you tell us then how long it took the O'HARE to proceed from her station at right-hand screening vessels at zero zero zero to right-hand screening vessel on 270?

A. Well, we can check it, the log, and see the period of time that elapsed.

Q. Well, please do. I would like to have that information if it is contained in there.

A. Well, according to this log, it took us 24 minutes. From 0014 to 0138. That could be a couple of three minutes off, of course. You have to turn, you have to pick up speed and—

Q. Who would determine and how would you determine when you had arrived at the new station?

A. Which ranges and bearings to the guide.

Q. Would you determine that?

A. Yes, sir.

(Pp. 45, 46, 47)

Q. Now proceeding along at 14 knots on 270 and you received an order from the screen commander to take station 5, will you tell us just what the O'HARE did in order to carry out that instruction, what course changes she made, what speed changes she would make?

A. Well, I remember in that instance our speed remained the same. However, we steered right about five degrees and over a period of approximately ten minutes to acquire a new station; but it was not a radical change for us, and I remember that the RUCHAMKIN, having been assigned that station and she was not near her station, and I remember distinctly that I just eased over rather than make a radical change of course and speed. I knew where I was going and I had a very short distance to go relatively, so I just edged over into station 5 rather than make a radical change.

Q. When you made that course change, you blew no whistle?

A. No, sir.

Q. When you made that course change, did the vessel, I take it was the HOLLIS, and number one, make any change of position?

A. She had a slight change, I believe, sir.

Q. So that it would be necessary for her, I suppose, to turn slightly to the left to allow some room for the RUCHAMKIN to come in and assume position, which would be what, 3?

A. Yes, sir. I assume that her relative position would be slightly to the left; yes, sir, because a five ship screen is set up a little differently from a four ship.

Q. And the instructions to shift to a five ship screen would come over voice radio from the screen commander, would it not?

A. Yes, sir, and that came at time 0207.

Q. By the way, while we are on the subject, do I understand it correctly that the screening vessels are given the even numbers when they are on the left and the odd numbers when they are on the right?

A. Yes, sir.

Q. So that in this instance the outside left vessel would be number 4?

A. Yes, sir.

Q. Inside number 2 and then the HOLLIS which was to the right, would be number 1 and the O'HARE would be number 3?

A. No, sir, we assigned to 5; the RUCHAMKIN was assigned to 3.

Q. That is in five ship screen, but—

A. Yes, sir.

Q. But in the four ship screen, you had number 3?

A. 4 ship screen position number 1 would be slightly to the right, to the starboard side, relative position. One would be slightly to starboard. Position 2 would be slightly to port. In a five ship screen position one would be dead ahead.

Q. I see. And 3 would be a little to the right and—

A. Five on the wing, two to the left and four on the port wing.

Q. Would the vessels, number 2 and 4 on the screen, make any changes of position in order to shift from a four to a five ship screen?

A. Very slight, sir.

Q. But they would make some changes?

A. They would just change course maybe ten degrees.

Q. Now do you recall any of the screening vessels blowing a whistle when they changed from a four ship screen? Put it this way: When they changed course in order to carry out or shift their positions from a four to a five ship screen—

A. No, sir.

Q. You didn't hear any whistle?

A. No, sir.

* * * * * *

(Pp. 48, 49, 50, 51)

Q. When did you do that? You changed then from 270 to 257

A. At zero one forty-five.

Q. And that signal to carry out that change of course came from the officer of the task?

A. O.T.C.; yes, sir.

Q. Force?

A. It came from the O.T.C. through the screen commander; actually amplifies the order of the O.T.C. O.T.C. orders it. The screen commander reorders it.

Q. Yes. Do you know the purpose of shifting the course from 270 to 257?

A. No, sir, I don't. We had numerous contacts on each side of us and up ahead of us, but—

Q. Before we get into the contacts, I am trying to find out, if I can, just what the O'HARE did, what movements she made that night about this time and can you tell us how long a period the O'HARE proceeded on 270 after she had arrived on that station before one forty-five when she received orders to change to 257?

A. Well, we evidently arrived at 270 on one forty-five and for 7 minutes we steered 270 and then at zero one forty-five why we changed course to the left to 257.

Q. That is a 13 degree change. How would you accomplish that change? What change would the O'HARE make? How much of a swing?

A. She would have to swing very little because at the time those heavies moved around, then we could move around without any difficulty, maybe change ten degrees to port, put on one knot, slow right down again.

Q. Well, that is what I am trying to find out.

A. Yes, sir, very slight course change.

Q. You say very slight, but that may not mean very much to someone who doesn't know. Can you give us a better idea in degrees what helm movements, or speed changes are necessary to carry out that course change?

A. Well, offhand I would say we would come left, put on one knot, come left, fifteen degrees, steam 3, 4, 5 minutes.

Q. And then when you

A. Steady up on 257, cut our speed down.

Q. Then you might have to come right angle and stay up?

A. You might come right five degrees to actually get right on schedule.

Q. Or, in other words, in order to go from 270 to your projected station on 257 you wouldn't necessarily follow a straight line at the same speed at which you had been previously proceeding? It's necessary to make a speed change?

A. Slight course change and very slight speed change.

Q. And when you say "slight" that can mean a couple of degrees one way or the other?

A. Well, I say slight. I mean ten degrees to port, fifteen to port.

Q. Now do you remember what instructions came over the voice radio to you and to the RUCHAMKIN when the screen position changes were given? In other words, can you give us the substance of those orders?

A. Well, at 0207 the screen commander ordered us to take station 5 and ordered the RUCHAMKIN, who at that time was circling within visual range and radio range to take station 3, and we proceeded to that station.

Q. Well, now do you remember what orders were given to RUCHAMKIN, or hearing any of the orders besides—

A. I heard them; yes, sir. I don't have the exact wording of it. I know the general context of it.

Q. All right. Will you tell us?

A. Screen commander told the RUCHAMKIN to proceed to station 3, screen such and such, course such and such, screen axis such and such.

Q. Now it is reported that the RUCHAMKIN got her instructions to expedite. Did you hear those orders?

A. Yes, sir, I heard that.

Q. About when did those expedite instructions come through?

A. I believe they came not more than 3 to 4 minutes prior to the collision.

Q. Well, when with reference to this instruction to the RUCHAMKIN to take station were those instructions given to her? That is—

A. To expedite?

* * * * *

(P. 52)

Q. Let's go back to zero two o six. On signal from O.T.C. change speed to eight knots. You previous to that, you'd been proceeding at fourteen?

What was the reason for that order?

A. I don't know specifically. In my opinion we slowed somewhat to allow the RUCHAMKIN to be in a better position to take her general position. She came in from astern of the formation and her relative speed would be rather low because the formation was going away from her. She did not have a great deal of speed. She was not a fast ship. If we were at 14 knots and she were at 20 knots, her relative speed would only be 6 knots which would take her quite a long time to arrive on her station so I should imagine that the reduction of speed was to allow the RUCHAMKIN to take her station.

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(Pp. 57, 58)

Q. Now let's get down to the WASHINGTON. Do you remember her?

A. No, sir.

Q. Do you remember seeing her before the collision?

A. I do not remember seeing her specifically. As I have said, there were a number of contacts out there, numerous contacts and I could not remember specifically the WASHINGTON.

Q. Well, when you started out, and by "you" I mean the O'HARE and you individually as one of the officers of the vessel, when you started out on this maneuver, having read the op order and perhaps being briefed on it, were you aware that this operation or practice maneuver was in the vicinity of the merchant shipping lanes?

A. Yes, sir.

Q. What provisions were there, or what instructions did you receive with respect to your navigation, or what you would do in the event you met any merchant ships perversely?

A. Well, sir, our captain gave us verbal orders that afternoon to be especially careful during the night due to the number of ships along that coast, just off the coast. I knew we were going to run into a lot of contacts and I considered myself very alert that night in watching these contacts. Captain was on the bridge quite a bit during the night because we had contacts ahead of us, and on the port side of the formation and passing down the starboard side of the formation, numerous ones, and we had so many contacts that I

* * * * *

couldn't make out the RUCHAMKIN specifically. I mean the WASHINGTON, specifically.

(Pp. 60, 61, 62)

Q. Now this formation, you said, was between 5 and 6 miles wide, that is from the screening vessel on the left to the O'HARE, which was on the extreme right?

A. Yes, sir.

Q. Do you have any recollection of seeing a vessel which might have been the WASHINGTON proceed in between the HOLLIS and the HOWARD and in through the formation? Do you remember this incident of the WASHINGTON?

A. I do not remember seeing the WASHINGTON come through the screen. The visibility that night was extremely good. The visibility was almost unlimited and there were quite a number of lights through the main body and through the screen and on beyond the screen from my position to the port side of the task force. Numerous lights.

Q. Yes.

A. And there were so many there that I specifically did not see the WASHINGTON come through the screen.

Q. Well, now did you hear any reports come through radar or from the O.T.C., or from the screen commander regarding the presence of the WASHINGTON in the formation?

A. No, sir.

Q. Did you have any knowledge of where the RUCHAMKIN was at the time this order came through to take station number 3 in the screen?

A. She was astern of the formation to the best of my knowledge.

Q. How far astern would you say; had you checked her position on radar? Do you know approximately?

A. I watched her visually. She came astern of the main body and swung too wide actually, and lost a lot of—well, she swung rather wide astern of the main body of the formation. That is why she was told to expedite taking station because she was, made too wide a swing astern, should have cut closer to the stern of the formation. She had to come up ahead of the main body.

Q. I think you said, as I recollect, that you recall that this order to the RUCHAMKIN, which would, I take it, come over this common voice radio circuit, to expedite came through around two-ten?

A. Yes, sir.

It came through very shortly before the collision itself.

Q. What is there that fixes that in your mind?

A. I watched the RUCHAMKIN move up in the station.

Q. Yes. Why?

A. Because I followed her around, just my interest in seamanship. I saw her make too wide a turn astern of the formation and I know that she was going at approximately 20 knots, judging by the wake she was throwing to move up to get into position and I never did see the WASHINGTON.

* * * * *

(P. 64, 65, 66)

Q. Were you in the position to hear any radio communications between this various C.I.C.s?

A. Yes, I was in a position to hear most of it.

Q. How would you hear it? Was it loud enough so you could hear it?

A. No, sir, we had remote loud speakers on the open bridge and also in the pilot house. Quite a bit of this information as to contacts I would not hear though.

Q. Why?

A. Because we had no speaker on that circuit. It was a circuit dealing primarily with contacts of C.P.A.s and courses and speeds on various ships. I would not be in a position and was not in a position to hear all the information that came in the C.I.C. as to these various contacts out ahead and around the formation.

Q. Well, did you hear any warning come through the C.I.C. to the RUCHAMKIN or the WASHINGTON?

A. No, sir, I didn't hear it. It could have come on nets that I did not hear. I just did not hear.

Q. Could you please, as you have done before, draw a rough diagram of the position of the RUCHAMKIN and the O'HARE and the main body at two-ten to give us some idea of what you are talking about; that was the time that you think this order to expedite came through to the RUCHAMKIN?

A. You want now the WASHINGTON?

Q. No, not the WASHINGTON. The RUCHAMKIN.

A. RUCHAMKIN, two-ten?

Q. Yes.

A. O.K.

Q. Just mark "main body" around that.

Now at two-ten when the RUCHAMKIN was given instructions to expedite, having received also instructions to take position number 3, it was necessary for her to follow approximately the course indicated by that dotted line?

A. Yes, sir.

MR. BRUSH: May we have them marked?

(The Notary so marked the two yellow diagrams respectively as Walthal Exhibits 1 and 2.)

* * * * *

(Pp. 73, 74)

Q. That's right. Now under what circumstances did you see the RUCHAMKIN?

A. Well, I saw the RUCHAMKIN come around the stern of the main body and head for her new position in the station or position in station 3. She made a very wide turn there and she had quite a long way to go relatively speaking, and she had what appeared to me to be a straight shot from her turn astern of the formation up to station 3. I watched her there when she was in her turn and also after her turn and I was watching her when she received her expedite, but I did not see the collision and I did not, was not watching the RUCHAMKIN two or three minutes prior to the collision.

Q. What were you doing then?

A. I was checking the contacts ahead and other duties, at the time of the collision.

Q. What lights, if any, did you see on the RUCHAMKIN?

A. I distinctly saw the RUCHAMKIN's running lights and all the ships. The visibility was excellent that night and the whole main body in all the ships there, their lights just stood out and it looked like a city. The main body looked like a city, there were so many lights, and that was one of the difficulties to see a ship between ourselves and the main body would be somewhat difficult due to the number of lights in the background and on beyond.

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Excerpt from the Deposition of Theodore A. Jore, signalman on the USS FREMONT

(Pp. 24, 25)

A. It is very easily removed.

133XQ. What do you do—just pull it off?

A. It is twisted on.

134XQ. I see.

Are you able to focus or turn or trim the 24-inch lights? In other words, are they in a fixed position, or can you swing them around?

A. No. They can be elevated and also rotated 360 degrees.

135XQ. Can you signal with those lights?

A. Yes.

136XQ. You do signal with those lights on occasion, don't you?

A. When the occasion arises, when you have a large distance to communicate.

137XQ. Now, in your direct examination you have spoken of various time intervals.

Tell me how you fixed those time intervals. Is that just a guess on your part, or did you have a watch and did you look at it?

A. Those times given are all approximate, due to the fact that you might say I am not a clock watcher.

138XQ. Did you have a wrist watch?

A. Yes. I had a wrist watch.

139XQ. Could you see it? Had you looked at it?

A. No, I hadn't.

140XQ. When did you first notice the lights of this unidentified merchant vessel?

A. When she was located off our port bow.

141XQ. Will you estimate, if you can, please, how long that was before you first started, or before you received the order from Captain Day to signal?

A. Approximately 15 minutes.

142XQ. How was your attention attracted to her presence? Did you hear somebody talking about her, or did you notice a light, or what?

A. No. Part of our duties as a signal aboard ship is to maintain a look-out and see what is going on.

We have to watch for visual communications, and that is how I happened to notice that light.

143XQ. So that while you are standing watch you continuously look around?

A. That is right.

144XQ. So that you will be able to pick up visual signals sent to you, either by vessels not in the formation or vessels in the formation—is that right?

A. That is right.

* * * * *

Excerpt from the Deposition of Willis Hempfer, CIC, USS HOLLIS

(P. 124)

Q. Did anybody in your C.I.C. have any knowledge of where the RUCHAMKIN was? Did you hear any discussion about the RUCHAMKIN?

A. No, sir.

Q. Did you hear any inquiry from the conning officer, or from the captain, Captain Persons, concerning the RUCHAMKIN?

A. No, sir.

Q. Did you hear any requests for ranges and bearing from Captain Persons to the RUCHAMKIN?

A. No, sir.

Q. What is the name of the commanding officer of the HOLLIS?

A. David L. House.

Q. House?

A. David L. House?

Q. Did you hear any inquiry from Commander House concerning the range and bearing to the RUCHAMKIN?

A. No, sir.

* * * * *

Excerpts from Deposition of Charles W. Morris, port lookout, USS RUCHAMKIN until 2:10 a.m.

(P. 7)

Q. How long did you remain as a lookout on the port wing of the bridge?

A. Approximately a half hour.

Q. Which would bring you up to what time?

A. About ten after two.

* * * * *

Q. During the time when you were on watch on the port wing of the bridge did you see any new light in addition to those which hadn't been pointed out to you by McElroy when he turned over the watch to you?

(P. 8)

A. Well, I don't recall for sure.

Q. Now, what was the name of the man who took over the port lookout from you?

A. McElroy.

Q. The same name you relieved before?

A. Yes, sir.

Q. Did you tell him what lights you had seen?

A. I told him just about the same as before.

Q. Was it just about the same as before?

A. Yes, sir; I believe so.

Q. Now had you seen any colored lights approaching your vessel during the time you were reported lookout?

A. I couldn't say for sure. I don't recollect.

Q. Did you report any colored lights?

A. I am not sure.

* * * * *

(P. 29)

Q. I am now talking about the period from one o'clock until about twenty minutes of two.

A. Yes, sir.

Q. Could you see the lights of the other Navy ships during that period?

A. I believe I could, sir.

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(P. 30)

Q. During that period did you see any lights?

A. Yes, sir.

Q. What lights did you see?

A. Seen white lights.

Q. Where were they located?

A. I believe they were dead ahead, couldn't say for sure.

Q. Can you describe their appearance to us?

A. They was white lights.

Q. Do you know how many there were?

A. No.

Q. Were they bunched together; were they spread out?

A. They looked like they was—well, they wasn't—couldn't exactly say was bunched together, wasn't spread out neither.

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(P. 31)

Q. Did you see any other white lights during the period of one o'clock to one-forty a.m.?

A. I don't believe so, sir.

* * * * *

(P. 33)

Q. Now one-forty, when the bridge, previous bridge talker returned and relieved you, you then relieved the man who was standing port lookout?

A. Yes, sir.

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(Pp. 34, 35)

Q. And from whom you got your instructions. When you took over the duty as port lookout.

relieved the port lookout, what did you say to him and what did he say to you?

A. I asked him if he had any ships out there and he told me that he—told me what ships he had out there, that he had reported them.

Q. What did he tell you, do you remember? What ships he had out there?

A. No, sir; I don't remember.

Q. Do you know whether there was one or fifty or five or ten?

A. It was more than one, but there wasn't fifty. I couldn't say the exact number.

Q. Where were they?

A. They were dead ahead, sir, about anywhere from dead ahead to about ten points off the port bow.

Q. Were they the same white lights that you had seen as you were standing the watch as bridge-taker?

A. Yes, sir.

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(Pp. 37, 38)

Q. How long a period of time did you stand port lookout?

A. Approximately a half hour.

Q. During that half an hour did you make any report?

A. I can't remember, sir.

Q. How often did you continue to look out ahead?

A. Repeat, sir?

Q. Well, did you, after you first scanned the horizon with the binoculars when you took over the watch, did you look through the binoculars again?

A. Yes, sir.

Q. How many times?

A. I'd say about every two or three minutes.

Q. What area did you cover on the port side?

A. From dead ahead to about five points off the stern.

Q. Did you at any time see any other white lights than those that you first observed when you took over or relieved the port lookout at one-forty?

A. I couldn't say for sure, sir.

* * * * *

(P. 43)

Q. Now during this thirty-minute period you stood port lookout did you receive any report of the presence of another contact?

A. Did I receive any report of it?

Q. Yes.

A. No, sir.

Q. Did you hear anything about it?

A. No, sir.

Q. Did you hear anybody speak about it?

A. No, sir.

* * * * *

(P. 44)

Q. Now when you were relieved as port lookout, what did you say to the man who relieved you and what did he say to you?

A. Why, told him everthing was just about the same, I believe. I'm not sure.

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(P. 45)

Q. How long did it take you from the time you left the place where you were standing port lookout

to the time when you came out from underneath, out below deck and saw the hull of the ship about fifty feet away?

A. I'd say about three or four minutes.

* * * * *

Excerpts from the Deposition of Thomas H. McGlaughlin, OOD, USS NEWPORT NEWS

(P. 12)

Q. Will you please describe when you first picked up the Washington, how she was sighted, by whom, if you remember, and what was done.

A. We first picked her up when we were on our easterly course.

Q. You were on an easterly course?

A. Yes. The ship and formation were on the easterly course.

Q. Where was she at that time?

A. She was to the south of us.

Q. And how did she bear from you?

A. I don't recall. She was quite a ways away, and I was not too much concerned at that time.

Q. How did you pick her up—on radar?

A. Yes, sir.

Q. About how far away was she at that time?

A. I don't remember.

Q. Thereafter, tell us what happened as far as the Washington was concerned.

A. We tracked the Washington on C.I.C. and her movements were reported to the bridge. That is routine. We turned north; and that northerly course,

of course, headed away from the Washington, so we were less concerned then.

* * * * *

(Pp. 15; 16, 17, 18, 19).

Q. When you set out from Norfolk, were you aware of the fact that this practice maneuver would take your vessel across merchant ship lanes and vessels that were proceeding up and down the coast?

A. Yes.

Q. Coming back to the time the Newport News was on this northerly course or approximately northern course, did you take any notice or particular note of the Washington at that time? Did you have a report from her on C.I.C. or—

A. We maintained a track of the contact.

Q. Why?

A. That is standard procedure.

Q. What is your recollection of the approximate course of the Washington during the time you were on the northerly course? I do not mean in degrees.

A. Still north.

Q. In other words, she continued to travel north after the Newport News turned on a general northerly course, didn't she? Were you farther out to sea than she was at that time?

A. Yes, sir.

Q. As you proceeded north and she proceeded about north, how far away would you say you were from her?

A. We opened the distance.

Q. Opened the distance?

A. Quite rapidly, yes. I would say that as we went north, she [illegible] as I say, I don't recall, but

she possibly could even haven gotten out of radar range.

Q. Now, there came a time later on in the early morning when the task force group turned left or in approximately a westerly heading. Did you continue to maintain a watch on the Washington, do you recall?

A. Yes, sir.

Q. Do you recall in a general way, as the Newport News turned left or westward, where the Washington was at that time? I don't mean exactly, but approximately?

A. Approximately on our port bow at considerable range.

Q. Considerable range?

A. Yes.

Q. Would that be in excess of ten miles, do you think?

A. It possibly could.

Q. As you continued on this westerly course or approximately westerly course, did the Washington, as you recall, appear to maintain her same course and approximate same speed?

A. Yes, sir.

Q. In other words, she was just plodding along like most merchant ships bound up the coast?

A. Yes, sir.

Q. Would you describe in a general way what you observed of her or what reports you had from the C.I.C. as you headed westerly? I would like, if I could, to get your general narrative of this picture as you went along on that night, as best as you may recall it now?

A. We had, as I remember, several contacts, of which she was one. We were more concerned about

her than any of the rest, and we were not tracking any more.

Q. Were these other contacts presumably merchant ships?

A. Other than our own formation, yes, sir. The contact that we later again found was the Washington, approached the formation and passed bearing from our port bow. She was about 315 relative, or so. We saw her lights. I don't remember exactly what the range was. I do remember specifically when she was roughly one to two thousand yards outside of the screen.

Q. When you say "outside" is that ahead of the screen, in the direction in which you were—

A. On the other side of the screen from us.

Q. Go ahead.

A. She continued to close the range. At that time the bearing and the course and speed of the Washington were such that it looked like she passed through the screen and ahead of us. She did that, went across the forward—went ahead of the main body of the heavy ships in formation, inside the screen, and began closing the ships on the starboard side of the formation, and collided with the Ruchamkin.

Q. Tell me: while all this was going on, did you know where the Ruchamkin was?

A. Yes.

Q. I take it you were aware that the Ruchamkin was scheduled to take her station in the screen at some time or other, which would mean that she would have to proceed up alongside the main body and up ahead into the screen; isn't that right?

A. That is correct.

Q. Did you look at the radarscope at any time while the Washington was proceeding on a northerly

course and this group was proceeding on a westerly course?

A. Yes, sir.

Q. Do you remember whether you saw the Ruchamkin?

A. If I had looked at the scope I would have. There were many ships in the formation. I saw the whole formation in the scope.

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(Pp. 20, 21, 22)

Q. But you do have a fairly distinct recollection of the Washington; and is that because or the subsequent collision with the Ruchamkin?

A. No; it is because I noticed her, as I say, very definitely when I took particular interest when she was outside of the screen and appeared to be on a course such that she would enter the screen.

Q. Why would that interest you?

A. Because I am responsible for the safety of the ship

Q. Well, was there anything that was said or anything that you saw, or was there any report that you received on C.I.C. or otherwise, that indicated to you that the Newport News might be in danger because of the presence of the Washington?

A. Yes. She was—the Washington appeared to be on a course such that she would enter the screen and come reasonably close to the Newport News.

Q. Now, do you remember about when that occurred? How long before the collision was that?

A. Oh, I would say ten—maybe ten minutes

Q. Ten minutes?

A. Ten minutes, yes, sir.

Q. Where was she with reference to any of the screening vessels or any of the vessels in the main body, at the time you took particular notice of her?

A. Approximately 2000 yards outside the screen, on the other side of the screen from us.

Q. Could you—by just drawing a few dots on some paper here, indicate the approximate situation at that time? In other words, I am trying to visualize where she was when you felt that there might be some difficulty.

A. (Witness refers to a pad of paper.).

Q. I don't know if you can fix the hour or the time; but, if you can, pinpoint it a little bit so we can get an idea of when this situation occurred.

A. (Witness prepares diagram.) I don't know whether I should put these screen ships down or not. That is pretty vague in my memory, as to where they are, to represent the screen. There were other ships in the main body, but I didn't draw them in.

Q. Have you any idea where the Ruchamkin was at about that time?

A. Roughly, somewhere over here (indicating on diagram).

Q. Now, have you any idea about what time this situation existed? If you can give the time, how close would it be, say to 2 o'clock? One way or the other, can you fix that?

A. 2 o'clock is as good a time as any.

* * * * *

(Pp. 26, 27)

Q. Did the Newport News have any difficulty maintaining station at night?

A. No, sir.

Q. From what you could see, were the other ships on station?

A. Yes, sir; except the Ruchamkin was joining up.

Q. Is there a certain tolerance for vessels trying to maintain station?

A. Yes, sir.

Q. What was that tolerance on this night, would you say?

A. Three degrees in bearing and 10 per cent of range.

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(Pp. 36, 37)

Q. After she passed through the screen, what could the Washington have done to get away from the vessels in the formation, in your opinion?

A. That would be hard for me to say. If she had followed the rules of the road, she should have gone astern of all the vessels. However, after she passed through the screen it would have been impossible

Q. What rule of the road would require her to go astern of the vessels in the formation?

A. I can't state it exactly, but the rule says the ship on the starboardhand in a crossing situation is the privileged vessel, and the burdened vessel is obligated to clear that ship astern.

Q. In other words, you assumed that the starboardhand rule applied to that situation, did you not?

A. Yes, sir.

Q. Then why did you reduce speed?

A. Because I had orders from the O.T.C.

Q. Didn't you know that that violated the rule of the road, this rule of the road that you regarded as applying to this situation?

A. In that particular instance I think I would rely on the rule of good seamanship and the general credential rule; and it looked to me like that was a good thing to do.

Q. In other words, you thought that the O.T.C.—

A. It would make the Washington pass farther ahead of us than she ordinarily would have, had we not reduced speed.

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(P. 42)

Q. As you were proceeding on this night in the Newport News, how wide an area would you say this formation extended over the ocean, let us say between the ships on the left and the ships on the right?

A. (Referring to McGlaughlin Exhibit 1) Between six and eight thousand yards in diameter.

Q. Are you talking now of the heavy ships in the formation?

A. No; I am including the screen.

* * * * *

(P. 43)

Q. If you wanted to talk to the Ruchamkin, what did you have to do? What was necessary; can you give us some idea?

A. We have a hand set on the open bridge; and I could contact the ships in the formation with that hand set.

Q. If you wanted to warn the Ruchamkin about the presence of the Washington, all you had to do was pick it up like a telephone receiver and say, "Do you

know the Washington is here?" or something like that; isn't that right?

A. That is right.

* * * * *

(Pp. 65, 66, 67)

Q. Wouldn't it be advisable to warn against

Q. Wouldn't it be advisable to warn merchant

A. Oh, it might be advisable. In my opinion, I don't think that it is any—it would be any obligation at all on a ship to warn another ship in a situation like that. There are all these lights there, and anyone who could see would know the situation. A man would not have to be warned.

Q. What obligation is there, under the rules of the road, to avoid lights? In other words, you assume in all of your opinions and conclusions that when you see a light you are supposed to move away from it; is that right?

A. No, sir; you are supposed to use that light as information in helping you to estimate the situation.

Q. What information were you giving on the other naval ships of the presence of the Ruchamkin, by the lights that you were showing?

A. Information we were giving the other naval ships?

Q. What information were you giving to other ships—you? I mean by "you" the Navy ships in the formation—that the Washington was there.

A. As I say,—

Q. I mean, that the Ruchamkin was there.

A. I was giving none that the Ruchamkin was there.

Q. And neither was any of the other vessels?

A. To the Washington?

Q. Yes.

A. I don't know about that. I was giving no information.

Q. Well, there is no light you could show that would say, "Here is another ship astern of us"? How would any Navy ship in that formation disclose that the Ruchamkin was back there, except by radio or—

A. You mean how would the Washington know that the Ruchamkin was there?

Q. Yes.

A. By the —

Q. How?

A. Well, the same way that she would know that any of the other ships in the formation was there—by seeing her, the ship, on the radar, or by seeing the lights.

Q. And unless she saw the Ruchamkin on the radar, or she saw the Ruchamkin's lights, she wouldn't know she was there, would she?

A. No; except at close range she could probably see the ship.

Q. But you knew the Ruchamkin was there?

A. Yes, sir.

Q. And the flagship knew she was there?

A. Yes, sir.

Q. And every ship in the Navy formation knew she was there?

A. Yes, sir.

Q. But you didn't regard it as your duty to warn the Ruchamkin or tell the Washington she was there?

A. No, sir.

MR. BRUSH: That is all.

Will you mark this last diagram made by the witness as McGlaughlin Exhibit 3.

* * * * *

Excerpts from Transcript of Hearing before Judge Bryan on September 12, 13, 1955.

(P. 61)

No. The Navy doesn't particularly care whether I win or lose this lawsuit. The Navy is very interested in having its officers conduct their business in the way in which they have since the Navy opened up without fear of anybody criticizing them or getting them up on the stand and asking them embarrasing questions based upon a misapprehended answer to a question which they had given at a previous proceeding.

Now, when we get around to our difficulty with Mr. Crenshaw, I think the answer is very simple. Mr. Crenshaw at this meeting we had over in Washington where he made the same argument and said you shouldn't go around through this procedure; you should do it straight down the middle; he said, Mr. McGovern says what my office has done in the Oregon-New Mexico case—there is one significance in this case and that case—we lost that case and we don't intend to lose this case.

* * * * *

(P. 62)

THE COURT: That is to make the witnesses available?

MR. MCGOVERN: Yes, sir.

* * * * *

(Pp. 63, 64)

Now the arrangements we had had with respect to the last group of witnesses that Mr. Crenshaw told about, they were the people who we expected to bring to the trial and found couldn't make it, and included both, primarily all persons in civilian life. As to those persons we were very careful to get their testimony declassified, to bring it along, and to show it to opposing.

Now he criticizes the amount of time he has to look at it. I am sure he has no more time to look at it than they have, than I have.

* * * * * *

(Pp. 66, 67, 68, 69)

THE COURT: How do you claim the privilege? Do you claim it in the affidavit or —

MR. MCGOVERN: No, Your Honor, we claim the same way an attorney does in the Lickman-Taylor sense.

THE COURT: How do you plead it here?

MR. MCGOVERN: We maintain it is privilege as a matter of law.

THE COURT: In your answer to the interrogatories?

MR. MCGOVERN: No, no, Your Honor; not answer to the interrogatories.

THE COURT: Where does it appear?

MR. MCGOVERN: I think it is in my brief.

THE COURT: It is in your brief?

MR. MCGOVERN: Yes. We had a system — the Court may remember it, which was the system used

before the Reynolds case which was for a formal claim of privilege by the head of the department.

THE COURT: Yes.

MR. MCGOVERN: That we have not done in this case because we did not understand we were getting to that particular part of the case. If that is a procedural defect in our record, I will be glad, very glad to satisfy it because the Navy at some time back said that the Navy said that the Secretary's Office was prepared to execute a claim of privilege.

THE COURT: How is the Court to understand, aside, of course, from accepting what you state orally that the Department is insisting upon a privilege?

COMMANDER BLOCHER. We have not been able to hear one word of what is going on.

MR. MCGOVERN: That is fatal, sir. Could you come around here, and Mr. HAYES, and Mr. BLOCHER, apparently there is a dead spot right back there. You haven't heard any of this disposition.

COMMANDER BLOCHER. I haven't heard any of your talk at all.

THE COURT: What I want to know is how is the Navy evidencing its claim of privilege here?

COMMANDER BLOCHER. I don't understand that the Navy has yet asserted a claim of privilege. It is my understanding that on this state of the pleadings it is the burden of the Texas Company to show good cause, and that is the question before Your Honor now.

THE COURT: Well, if the Court holds that it has shown good privilege, then do you tell me that if the Court holds that it has shown good cause, you tell me now that you then go to claim of privilege?

COMMANDER BLOCHER: Yes, sir; I would; that is, that that would be the next logical step. I don't know whether the Department at this point would claim privilege. I would imagine that it would, at least as to part of the records, that is, particularly the Court's findings and so forth.

MR. CRENSHAW: If Your Honor please, if the Department of the Navy intends to claim privilege at a date later than this and the Court holds back the decision for that, it would not matter whether the Court holds with us or not because it would be too late to use what we are asking for. Mr. McGovern has set out in the title of his brief that what the United States is claiming here is a conditional privilege which realistically viewed means that you have to assert good cause before we can get it.

Now I say we have asserted good cause. The United States, I think, is talking about something different, but that is our relative position. I don't believe that the United States should be able to go back to the Pentagon or wherever they might find a claim of privilege now and bring it up later. I think that they have had ample knowledge of this motion, and their whole position should be here today before the Court.

COMMANDER BLOCHER. I take it, if your Honor please, that this question of privilege has not been put before the Navy Department before.

THE COURT: Well, that is what we have been arguing here entirely.

MR. MCGOVERN: No, Your Honor, we have been arguing whether Mr. Crenshaw had shown sufficient good cause in view

THE COURT: You started out

MR. MCGOVERN: In view of the law.

THE COURT: As the first hurdle. Then we went to the question of whether or not it was privilege.

* * * * *

(P. 74)

Now all the authorities cited by Mr. McGovern boils down to one fact. There isn't any claim of privilege here. All it is is their saying that because of the nature of this record you should show more cause than you would ordinarily. Well, under discovery generally all you have to say is you have it, I want it, and that is cause. Now under this, it isn't sufficient cause to say that and we earnestly say that we have shown sufficient cause and that is what is determinative of our rights is whether we have shown cause.

* * * * *

(Pp. 87, 88)

COMMANDER BLOCHER: If Your Honor please, that testimony is classified until it is declassified. Nobody can express a willingness with which they can't carry out until after that declassification has been made. In other words, the procedure—

THE COURT: You have to start somewhere.

MR. CRENSHAW: This is the difficulty had here. Mr. McGovern says yes. Commander Blocher says no.

MR. MCGOVERN: I am talking about what as a lawyer I am willing to seek out of the Navy Department and Blocher, as a naval officer, is trying to say that he can't talk for the Navy Department until he actually sees it, and I think we are all being perfectly frank with the Court.

THE COURT: I think so, but I think what Commander Blocher overlooks is there has to be some time to start. We cannot just let it rest and so nobody has declassified it, and, therefore, nothing can be done about it.

* * * * *

(Pp. 89, 90)

THE COURT: No, wait a minute. You just give Mr. McGovern that list of the nineteen that you want. Then he can ascertain the willingness or unwillingness of the Government to produce those men, together with such parts of their testimony as deals with other than military secrets, and my present inclination now is to order that production because I think that follows the Reynolds case. I do not feel disposed to order the production of the whole transcript of the Board of Inquiry, but I think we ought to go as far as the Reynolds case has gone, and from what I mention, I think that is the course of the Reynolds case.

MR. CRENSHAW: We will give the names to Mr. McGovern. Now we will—something be done with those names—I will give them to him tonight. I will write them down and give them to him tonight.

Now this case begins in this courtroom two weeks from today. By what time would we have an answer? It would seem to me much simpler if the Court would say to the United States, you shall produce the testimony of those persons on the list of nineteen whose testimony is not classified now. Then they can go to their Navy Department with a court order. They can say the Court has instructed us to produce it, if it is not classified. Then we will be in a position to do some-

ing about it. This way it may be eleven out of four-
en days before anything will be done.

THE COURT: I think I can go as far as ordering
e production of these nineteen men.

MR. CRENSHAW: Of the men.

THE COURT: Of the men at such-and-such a time
or your examination, and I would suggest that they
e produced Friday of this week—Monday.

* * * * *

Pp. 96, 97)

THE COURT: But they want certain things in re-
pect to his personnel file.

MR. BRUSH: I am only reading what I know in
he motion. They have personnel records, medical
ecords and physical examination records on James
pton.

THE COURT: Want medical records? What else?
Will you read that.

MR. BRUSH: And the physical examination
ecords.

THE COURT: Medical records, physical examina-
on records, and what else?

MR. BRUSH: That is all they say. Personnel
ecords. I don't quite know what they mean by that.

THE COURT: How would that disclose anything
onfidential?

MR. BRUSH: Of course, the man's own personal
hysical examination, ordinarily we are not permitted
o give that out without instructions or his permission.

THE COURT: Well, how would you feel about do-
ng just what the Government is doing; that is, produce
he man for examination?

MR. BRUSH: Now, if the Court please, I would be very happy to produce Mr. Upton, but what Mr. McGovern has not explained to this Court is this, and this was a great to-do, about we were going to hide Mr. Upton. Mr. Upton is represented by an attorney in this case. He has sued the Texas Company. I shouldn't suppose that I can properly speak to Mr. Upton without being in the presence of counsel, and I certainly couldn't guarantee to produce him if he is no longer in the employ of the Texas Company.

I have tried to subpoena him and take his testimony in New York, and I have written his attorney advising him by registered letter that that is what we propose to do before this trial. I assume that his lawyer will produce him in this court because that is where his suit is pending, but the Texas Company has no control over that individual.

THE COURT: Well, he is before this Court.

MR. BRUSH: That is right; he is, and he is no client of mine, and he is not in the employ of the Texas Company, and those are the limitations.

THE COURT: What other witnesses?

MR. BRUSH: Now the mate, Mr. Riche, they want the same general papers.

THE COURT: Is he in it?

MR. BRUSH: He, and the mate and Cain are in the employ of the Texas Company, and we have by pretrial order agreed to produce them.

* * * * *

(P. 112)

THE COURT: Then I will strike what I said in reference to the taking of the deposition or the production of the witness to give his deposition on the motion

in respect to the motion of the Government. I was under the impression that it was asking for the witness.

* * * * *

Excerpt of Transcript of Hearing before Judge Bryan on June 2, 1954

(P. 19)

Now our exceptions are not on the ground of privilege. We are not claiming privilege. We are not claiming privilege for anything in this case. What we are trying to do is to say that, as the Supreme Court said in the Reynolds case, when we offered the Air Force men for examination by the plaintiff, there must be an adjustment between interest of litigants and the interest of the Government's security.

* * * * *

Excerpt from Deposition of Daniel J. Horgan, ODD, USS RUCHAMKIN

(P. 4)

Q. Now, you are the same Daniel Horgan who testified before the Court of Inquiry?

A. I am.

Q. And also before the Navy Board of Investigation?

A. I am.

Q. Now, there is testimony before the Navy Board of Investigation, which Mr. Brush and Mr. Crenshaw are looking at now. Have you seen that again this morning?

A. I have.

* * * * *

(Pp. 8, 9, 10)

Q. Now, where was the Rucamkin with reference to the other vessels in the formation at the time you took over the watch as Officer of the Deck?

A. We were approximately 10 to 15 miles astern, in back of the formation. We were maintaining this position, because we were ordered to do so. We had picked up a landing party and we were to rejoin the formation when they swung in towards the coast. When I took over the deck, we were on a course of 090 and we were not to join the formation until we had established our base course of 270, or approximately that course.

Q. When did you establish your base course of 270?

A. I would have to refer to the log, or something of that nature. I think it was around one o'clock, but I'm not too sure.

Q. This is the rough log (hands to witness)?

A. Approximately 0059. We changed course to 270, or we swung in various course changes to come to that base course of 270 about one o'clock a.m.

Q. Now, what was the situation at that time?

A. We were still about 8 miles in back of the formation, I would say; 8 to 10 miles. And we had not as yet received direct orders to assume our screening station. We were to be part of the screen in this Navy maneuver, and we had not as yet received orders to take our screening position. Therefore, we maintained our position, gradually decreasing the amount of distance between the main body and ourselves.

* * * * *

(Pp. 13, 14, 15)

Q. Had the screening vessels opened up to leave a hole or gap into which your vessel was going to go?

A. Yes. The screening vessel on our right hand side made a distinct movement, which was seen visually by me and by our right hand look-out; made a distinct movement to the right. And the screening vessel directly ahead of us, or a little bit off our port bow, made a distinct movement toward the left, which opened up the position for us to go into.

Q. Now, in the course of the Navy examination, which Mr. Brush and Mr. Crenshaw have, which you saw today, you were interrogated at length as to whether you had heard on the tactical circuit an order from the Commander of the Screen, Captain Persons, to the extreme left hand screening vessels, the Lloyd and Corry, to maneuver as necessary to avoid a stranger vessel, or merchant vessel? The precise word I'm not exact on. Do you remember that interrogation?

A. Yes, sir.

Q. Now, what do you have to say today with respect to that point?

A. I can remember having heard no message of that particular nature over any tactical circuit.

Q. Now, on your look-outs; did anyone check the look-outs to see whether they were working?

A. Yes, sir. The Captain was standing within 5 feet of the look-out on the port side, and I was standing within 5 feet the look-out on the right hand side or starboard side.

Q. Were they looking, or did they appear to you to be looking?

A. Yes, sir.

MR. MCGOVERN: Your witness.

CROSS EXAMINATION BY MR. BRUSH:

Q. Mr. Horgan, before starting out on this operation, had you attended any briefing or had you had sight of the operational plan or seascape under which this maneuver was being conducted?

A. Yes, sir.

Q. Well, it may not be clear from your answer whether you had attended a briefing or —

A. I had seen the operational order.

Q. You had seen the operation order. Do you know whether there was a copy of it on board?

A. Yes, sir; there was.

Q. Now, is it a fact that according to that operation plan the Ruchamkin was to perform a sort of a mission of picking up a landing party, or sortieing independently, and then scheduled to rejoin the formation as part of the screen at some hour during the evening; is that right?

A. That is correct, sir.

Q. In other words, this maneuver of picking up the landing party was sort of a slight diversion that you, as one of the screening vessels, were to perform?

A. That's correct, sir.

Q. Do you remember now about what time you were to join the formation, rejoin the formation?

A. I do not remember exactly the time, sir, but I think it was approximately 1:30, or 1 o'clock; but there was the presence of the formation to the South of us, which delayed that.

* * * * * *

(Pp. 16, 17, 18, 19)

Q. Now, did there come a time, then, when you approached the formation for the purpose of rejoining,

and then reported to someone that you were ready to rejoin them?

A. Yes, sir.

Q. And, about what time was that, and tell us in which direction the formation was proceeding at that time?

A. When we reported our presence, ready to join and assume our screening station, or ready to follow the directions of the flag, and ceased to maneuver independently, it was between 1:30 and 2 o'clock. We made our presence known to the flag, the Officer in Tactical Command of the Fremont, the flagship. The course of the vessels at that time was approximately 270, or a variation thereof—275, 265. We were definitely headed towards the beach.

Q. Towards the beach in a westerly direction?

A. Yes, sir.

Q. And, I take it, the Ruchamkin was somewhere behind the formation; is that right?

A. Yes, sir.

Q. Now, when you reported to the OTC, the Officer in Tactical Command on the Fremont, how did you report it, and did you receive the reply?

A. We received—I beg your pardon. We transmitted the message by blinker.

Q. I see.

A. And we received an acknowledgement of that message by the roger from the Quartermaster on the bridge of the Fremont.

Q. And do you remember now what that message was that you sent, as nearly as you can recollect?

A. Well, sir, to the best of my knowledge, I either made the message up or authorized its departure. Since the Captain was on the bridge, he did both. But,

to the best of my knowledge, I believe it was a movement report, and it stated that we had fulfilled our assigned mission and were now ready and prepared to discharge further duties at the direction of the Commander of the seascape operation.

Q. And, at that time, having sent that message, and being in that position, and being familiar, also, with the details of the operational plan to be carried out from that point on, did you then regard yourself as under the orders of the OTC, or the Officer in Command?

A. I would say, yes, sir.

Q. Did you thereafter attempt to convey that information as to your position and your readiness to take station to the Screen Commander?

A. We attempted to do so; yes, sir.

Q. Were you able to do so?

A. No, sir; we were not.

Q. Thereafter did you ever receive any messages from the Screen Commander directly?

A. Yes, sir; we did.

Q. And what were they?

A. We received a message from the Screen Commander to take station, to expedite taking station, and to continue to expedite taking station.

* * * * *

(Pp. 20; 21, 22)

Q. Now, is it a fact that under this operational plan there was provision for and you knew where you were going? That is, you didn't have to receive a separate order to proceed to some particular point; you knew where you would go, according to the plan? The plans specified what position you were to take; is that not right?

A. That's right, sir.

Q. And did you know that that would be, or can you tell us whether that would be on a comparatively straight course from the position in which you were at the time you reported you were ready to take station?

A. Yes, sir; it would be a straight course.

Q. And that that course would be parallel to and a specified distance, or an approximate distance, off the right hand side of the formation?

A. Yes, sir.

Q. When you got orders to proceed to take station, and you started to proceed to take station, and were under way, did you intend to make any changes of course before you reached that station?

A. No, sir.

Q. In other words, you intended, I take it, in carrying out the order to take station, to follow a comparatively straight line to that point?

A. Yes, sir.

Q. Now, can you tell us approximately what distance or how far off the formation that course, projected course, would carry you?

A. You mean our closest point of approach to the formation?

Q. Yes.

A. About a mile and a half.

Q. Mr. Horgan, its been called to my attention that in the Navy Board of Inquiry that you estimated that distance to be 1200 yards. I have no objection if you look over the statement to refrsh your recollection. (Hands to witness.) By the way, Mr. Horgan, for the record, perhaps, we should have the date on which you testified, or approximate date on which you testified.

before the Board of Inquiry. That is the date with respect to the collision.

A. It says a minimum of 1200 yards. Well, my recollection at that particular point was much better than it is now. I would say we were almost astern of the formation when we started to take our direct course to our screening station, and since our screening station was relatively in the center of the formation,—it wasn't exactly, it would be the second ship on the right hand side—we would have to pass rather close to the formation in order to reach that position.

* * * * *

(Pp. 29, 30)

Q. Yes. Now, have you ever had an experience in the Navy where being under orders say, of an officer like the Screen Commander, they have warned you or advised you of the presence of somebody around that didn't belong there, or perhaps the possibility of somebody being there who didn't belong there?

A. Yes, sir.

Q. Would you tell us about that? I'm trying to find out whether that is ordinarily the practice in the Navy, or whether you had some experience along that line.

A. Well, during this maneuver about which I was speaking a moment ago, the screen commodore did advise this ship, with whom the blips merged, of the presence of this other vessel, and the vessel acknowledged that he had him in sight.

* * * * *

(Pp. 31, 32)

Q. Of course, I take it, you now know, as a result of all these proceedings in the Court of Inquiry test-

mony, that the Washington was sighted visually some 20 minutes before the collision with you?

A. So I understand, sir.

Q. And that her course and speed were calculated and the c.p.a. solution reached, and the story is that that went out over the common circuits. Have you any knowledge or explanation as to why the Ruchmankin never received that information?

A. No, sir; I have no explanation.

* * * * *

(P. 39)

Q. I see. And during this period that you were on watch, did you notice whether the radar scope on the bridge was on a scale other than at 20 miles?

A. To my knowledge it wasn't, sir.

* * * * *

Excerpts from Deposition of Raymond B. Hirshman, Radar Operator, USS RUCHAMKIN

(P. 9)

Q. Did you use another range scale at any time?

A. Yes, sir, we shifted; the two mile scale.

Q. For what purpose did you shift to the two mile scale?

A. For tracking ourselves into position on the screen when we were approaching the main body and the screening station.

Q. Tell us so that we can understand just what it was that you did when you switched to the two mile scale and started to take ranges and bearings from the main body and the screen so you could get into the proper position.

A. Well, there is one switch you had to change, one notch, and we were getting ranges and bearings to the guide, I would say at least every thirty to forty-five seconds as we approached the main body; close contact with them. That was almost continuously, runs for, I'd say a half an hour before the collision.

* * * * *

(P. 10)

Q. How long did you give attention to the area between the guide and the screen commander?

A. Mostly taking our range and bearings off the guide and occasionally off the screen commander to see if he was on station.

Q. When you were looking at this area, did you at any time see a strange vessel come in?

A. Earlier in the evening we had concentrated on the whole area, but as we were approaching our screening station, we were relatively more interested in attaining our station than anything else. I'd say for about a half an hour we were maintaining mostly, getting the screen's position.

* * * * *

(Pp. 12, 13, 14, 15)

Q. When was the first notice that you had that there was a vessel was going to collide with you?

A. When it hit us.

Q. How close to where you were did she hit?

A. Well, she hit a little further aft, oh, I'd say maybe sixty feet further aft on the main level where I was.

Q. Was the blow sufficient to shake you?

A. Yes, sir, knocked me out of my seat.

Q. What happened to your set at that time?

A. Well, the power went out and we tried to get the emergency power on, and we were first concerned with our radios, and getting the message out that we were hit.

Q. Now I forgot to ask you, What was the minimum range of the radar that you were using, your estimate?

A. When it was working good, it was 350 yards.

Q. Minimum ranges means the distance within which the radar did not pick up things?

A. That is right.

Q. So that outside of 350 yards your radar, within the limits of the equipment, could have picked up any target coming from that area?

A. It should have; yes, sir.

Q. Did it?

A. Well, it picked up other contacts in the main body.

Q. Tell us about the other contacts in the main body.

A. I believe there was 16 or 17 other ships in that formation that night, and when we were working on the four thousand yard scale, 16 or 17 other pips out there. It was just a mass of confusion and you also have your minimum range on another ship there of approximately 350 yards also. If another ship came within 350 yards of a third ship, it would be merged together as one pip, and it was—we knew where the guide was, and that was about the only way we could differentiate these ships in the convoy and the screen. We knew where they should be and that is what we were trying to pick them up at.

Q. Now about how long would the pip appear to be, of the say the ship in the main body which was closest to you?

A. How long was it?

Q. Yes.

A. Well, I'd say on that scope, that on a thousand yard scale, it would be about thirty degrees and you would have a fairly sharp echo on it. In fact, you would have a very sharp echo when he was in five or six hundred yards, which was probably close—the ship probably was—I don't recall exact range it was at the time, being a big ship, would give you a larger pip also.

Q. Were you getting a good echo off that ship?

A. Yes, we were.

Q. Would that ship have masked any smaller, lower ship which was behind it?

A. Yes, it would also mask bigger ships too.

Q. The closer it is to you, the more mask?

A. There also could have been sea return. I don't recall what the sea conditions were that night.

Q. In all the time that you have considered this case, have you had any views about why it was that your scope didn't pick up the tanker before she did?

A. Well, I can't see any reason why it didn't, unless it was, just came in at a certain angle, passed the other ships within—too close, and just had a merged plot, and I believe we had picked it up earlier in the evening and had a course and speed on it, and the bridge had given some word to either disregard it or scrub it, or something, and also they were more concerned with getting on stations, since they were steaming, I believe, blackout that night. Also seemed to be

the policy that they were more worried about getting on station at the right time.

* * * * *

(Pp. 19, 20)

Q. What I am trying to get at, would you give it at the same time to your plotter and to the bridge, or would you stop the antenna twice?

A. Well, if they would coincide, I would give it to them at one time, but if there be two different—

Q. Did you volunteer any range and bearings to the bridge?

A. I believe I was when we were getting in pretty close to the main body.

Q. What do you mean by pretty close? How many yards?

A. I don't recall the exact yardage, but if the guide was, say, fifteen hundred yards away and it was a ship in between us, and the guide, he'd be in about seven, eight hundred yards, we'd be steaming up alongside of him also.

Q. Were you coming that close to the formation on this evening?

A. I believe so.

* * * * *

(Pp. 27, 28)

Q. I believe earlier you said that you were giving ranges and bearings then to one of these two sources every thirty-five or forty seconds?

A. That is about correct; either that, either the guide or the closest ship on our port side.

Q. If you were giving ranges and bearings at that frequency, would that render your set practically inoperative as a search set?

A. It would, to the fact that you'd no sooner get it on one scale than you'd have to shift back and stop your antenna and focus it in.

* * * * *

(P. 37)

Q. As I remember you said that most of your attention was directed to station taking.

A. That is right.

Q. Rather than your general search activity. Who directed your attention in that direction?

A. Well, the constant requests for ranges and bearing to the guide mad it almost impossible to concentrate on anything else.